



Board of Selectmen Meeting

Monday, February 25, 2019 7:00 PM

36 Bartlet Street, Andover, MA 01810

Selectmen's Conference Room

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TOWN OF ANDOVER, MASS

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- I. Call to Order – 7:00 P.M.
 - II. Opening Ceremonies – 7:00 P.M.
 - A. Moment of Silence/Pledge of Allegiance
 - III. Communications/Announcements/Liaison Reports – 7:05 P.M.
 - IV. Citizens Petitions and Presentations – 7:10 P.M.
 - V. Regular Business of the Board
 - A. Local Initiative Project Off Haverhill Street – (10 minutes)
Board to receive an overview of the proposed Local Initiative Project (LIP) off Haverhill Street from Princeton Properties.
 - B. Plastic Ban Implementation – (10 minutes)
Board to receive an update on the Town's plastic ban bylaw.
 - C. Annual Town Meeting Warrant – (10 minutes)
Board to consider voting to sign the Annual Town Meeting warrant.
 - D. Frederick Drive Appeal - (45 minutes)
Board to consider appeal by Attorney Donald Borenstein on behalf of Mark and Phillip D'Annolfo to disqualify three expert peer reviewers selected by the Conservation Commission for a subdivision project on Frederick Drive.

VI. Consent Agenda

A. Appointments by the Town Manager

Board to vote that the following appointments by the Town Manager be approved:

Department	Name	Position	Rate/Term	Date of Hire
Health	Cherie Monahan <i>(Jane Morrissey)</i>	Public Health Nurse	\$59,127.93	3/4/19
Community Services – Recreation (Seasonal)	Abigail Linzer	Seasonal	\$11.00/hour	2/25/19
Community Services – Recreation (Seasonal)	Anna Riley	Seasonal	\$11.00/hour	2/12/19

VII. Approval of Minutes

Board to approve minutes from the following meetings:

1. January 22, 2019 Workshop

VIII. Executive Session

- A. Executive session pursuant to purpose (3) of Massachusetts General Laws, chapter 30, section 21(a), the Open Meeting Law, to discuss strategy with respect to collective bargaining with New England Police Benevolent Association (NEPBA) Local 9 (Patrolmen), Local 109 (Communicators), and Local 99 (Superior Officers), AFSCME Local 1704, Department Heads, International Association of Fire Fighters Local 1658, and the Andover Independent Employees Association, as an open meeting may have a detrimental effect on the bargaining position of the Board of Selectmen.

IX. Adjourn

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the Americans with Disabilities Act, please contact Toni Magras in the Town Manager's Office at 978-623-8215 or by email at tonia.magras@andoverma.us

MEETINGS ARE TELEVISED ON
COMCAST CHANNEL 22 AND VERIZON CHANNEL 45



TOWN OF ANDOVER

Town Offices
36 Bartlet Street
Andover, MA 01810
(978) 623-8200
www.andoverma.gov

January 14, 2019

Important Information Regarding Thin Film Plastic Bag & Polystyrene Ban

At the 2018 Annual Town Meeting, Andover voters approved two citizen sponsored bylaws regarding the ban of thin film plastic bags and polystyrene products for establishments permitted to sell food in Andover.

Originally, both bylaws were to have gone into effect as of January 1, 2019. However, to complete the comprehensive education and outreach component needed for business compliance of these bylaws, enforcement will be delayed until March 1, 2019, with an opportunity for additional waiver consideration.

Here are some important facts about the bylaws:

Thin Film Plastic Bags

- The purpose of this bylaw is to reduce the number of thin film, single use plastic checkout bags and to encourage use of reusable bags, paper bags (made of at least 40% Post Consumer content) and cardboard boxes (that would otherwise be discarded by an establishment).
- This affects only establishments that have a permit to sell food in Andover.
- The only bags food establishments may provide are recyclable paper bags or reusable check out bags that meet the definition in the bylaw (generally reusable check out bags must be sewn bags with stitched handles that are specifically designed for multiple reuse, and are made of either polyester, polypropylene, cotton or other natural fiber material, greater than 4.0 mils thick) further guidance is being developed for this. Cardboard boxes may also be used for food distribution.
- Establishments have the option of charging the customer a fee for the compliant paper bags, except for SNAP and WIC program participants.
- Plastic produce bags may still be used in self-service bulk food operations such as nuts, candy, fruits, and vegetables.

Thin Film Plastic Bag Exemptions

- Farmers markets, food pantries, and non-food stores such as clothing stores are exempt from the plastic bag bylaw.

Important Information Regarding Thin Film Plastic Bag & Polystyrene Ban

January 14, 2019

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Polystyrene Products

- Food establishments may not provide prepared food, drink, or leftovers to customers in Foam Polystyrene or Rigid Polystyrene food containers. This includes all containers, bowls, plates, trays, cartons, cups, and lids.
- Plastic Utensils/Cutlery - The bylaw specifically states that disposable food service ware must be biodegradable, compostable, reusable, or recyclable; because the Town does not recycle plastic utensils/cutlery, establishments will need to distribute biodegradable or compostable utensils if reusable utensils are not used.
- Plastic straws will no longer be allowed; other types of straws such as biodegradable, compostable, paper, metal or pasta (to name a few) may be used.
- Residents may still purchase any of the regulated products for use in their home and it is acceptable for these products to be sold in bulk and for residents to use them.
- Cardboard, paper, aluminum, plastic containers (except #6 polystyrene), and compostable carry out containers are allowed.

Polystyrene Product Exemptions

- Coolers & ice chests are exempt from the bylaw.

Waivers

- The Polystyrene Bylaw allows the Board of Health to issue waivers of up to six months when an establishment can show that strict enforcement would incur a hardship particular to that facility.
- The Thin Film Plastic Checkout Bag Bylaw allows the Health Director to issue waivers of up to 6 months when there is an undue hardship to the establishment.
- Waivers will be considered on a case-by-case basis; affected establishments will be provided a form to be submitted to the Health Division.
- The Board of Health has stated that establishments will be given time to use stock that may already exist. Recognizing the transition that will need to occur for many businesses, it is expected that businesses may not be penalized for non-compliance for several months.

Business Outreach Plans

- Guidance documents for the affected businesses (about 170) are being finalized.
- Educational material will be sent to businesses through the mail and to email addresses the town has.
- An educational forum on these bylaws will be held for affected businesses to attend. More information will follow.
- The documents will be posted to the Town's website.
- The town will develop a streamlined process to seek waivers.



TOWN OF ANDOVER

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The Basics on...

ARTICLE 56: Polystyrene Food and Beverage Ware and Packaging Reduction Bylaw

1. What is the Polystyrene Food and Beverage Ware and Packaging Reduction Bylaw?

The bylaw was voted in on May 2nd, 2018 and it became effective on January 1st, 2019. The bylaw affects all food and drink establishments that serve food or drink in single-use disposable service-ware. This includes but is not limited to cups, plates, bowls, hinged or lidded containers, straws, cup lids, and utensils. Food establishments such as restaurants and fast food stores, grocery and convenience stores, beverage retailers, and other retailers must comply with this ordinance. "Food Establishment" includes any fixed or mobile place whether permanent, transient, temporary, private, public, or non-profit or any other place in which food or drink is prepared for sale or for service to the public routinely.

2. What is the purpose of the bylaw?

The purpose of the bylaw is to advance solid waste reduction and protect the health of Andover residents. Polystyrene food and beverage containers are expensive to recycle and are not biodegradable. Studies have shown that polystyrene food containers can leach harmful chemicals into food and beverages.

With this change, we encourage businesses to explore ways to reduce waste and save money. The town recommends food establishments consider reusable service-ware for consumption on their premises.

3. What is Polystyrene?

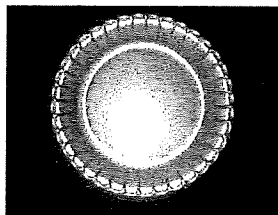
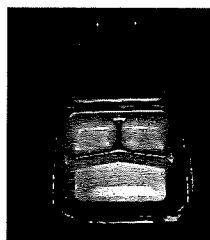
Polystyrene is a type of plastic that includes expanded polystyrene ("Styrofoam") and rigid polystyrene (all other #6 plastics). Common examples of rigid polystyrene could include cup lids, plastic condiment cups, Solo® cups, and clamshell food containers.

4. How can I tell if the food containers we give to customers are made of polystyrene?

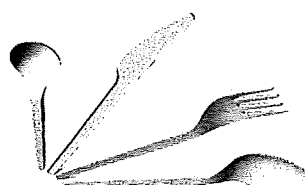
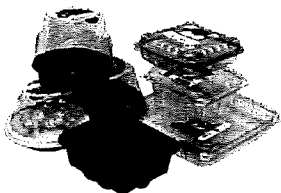
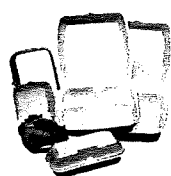
Polystyrene products are marked with the abbreviation "PS" or a "6" inside the chasing arrows recycling symbol.



Common Foam Products: Hot drink cups, plates and bowls, clamshell containers, food trays, meat trays, egg cartons.



Rigid Polystyrene Products: Clamshell containers, lidded take-out and other containers, Snap-on cup lids, lids for aluminum containers, plastic utensils, drinking straws, condiment cups and other small containers, plates, and drinking cups. Items may be clear, translucent, opaque.



5. How do I determine if a product is composed of Polystyrene?

Polystyrene products (both EPS foam and Rigid Plastic) are sometimes, but not always marked:

If an individual product is not marked with a universal recycling symbol/number and you are unable to determine what type of plastic it's made from, try looking for the recycling symbol on the packaging or carton the products came in. If you're still unable to find it, contact the distributor and /or manufacturer of the product for confirmation as to whether or not the product is comprised of polystyrene.

6. What alternative products can be used instead of Polystyrene?

Acceptable alternative products include:

- Reusable products (i.e. dishes, cups, trays, straws and utensils).
- Recyclable products: Products that can be recycled using the Town's recycling collection program
- Biodegradable / compostable products.
- Paper products.
- Polypropylene (PP #5) containers, lids, and cups are all recyclable and therefore acceptable.

7. What do I need to know about plastic utensils we offer customers?

The bylaw requires that any plastic you offer be able to be recycled through the town's recycling program. The Town does not accept plastic utensils in its recycling program, so the following options would be in play: Reusable utensils washed and sanitized in your establishment; compostable ware; biodegradable ware.

8. How are straws affected by the bylaw?

Plastics straws are prohibited by the bylaw; acceptable alternatives include metal or glass straws that are cleaned and sanitized between uses, paper, and other biodegradable or compostable versions

9. Where can I find alternative products?

Your restaurant supply distributor should be able to identify non-polystyrene products that will meet your needs.

10. When does the bylaw become effective?

The town's Bylaw Prohibiting Polystyrene in Food Service Ware became effective January 1, 2019. Because outreach has been delayed, we are working in a grace period to help establishments meet compliance as quickly as possible. To prepare for implementation of the bylaw, food service establishments should:

- Not order any more polystyrene product.
- Work with your restaurant suppliers to identify alternative non-polystyrene foodservice ware.
- Provide recyclable or compostable food service ware for "to-go" prepared foods/beverages.
- Consider using reusable food service ware for your on premise customers when possible.

11. Are there exceptions to the bylaw?

Yes. Coolers and ice chests that are intended for reuse are exempt from the provisions of the bylaw.

12. What happens if I do not comply with the bylaw?

The Board of Health has the authority to enforce the bylaw by:

- (1) inspection and investigation;
- (2) the issuance of violation notices and administrative orders; and/or
- (3) civil court actions

The following penalties will apply:

- (1) First offense: Warning
- (2) Second offense: \$50
- (3) Third offense: \$100 and appearance in front of Board of Health
- (4) Fourth and subsequent offenses: \$200

13. Can I apply for an extension or waiver?

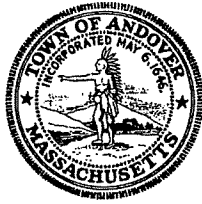
Any establishment may seek an exemption from the requirements of this chapter by filing a request in writing with the Board of Health. The Board of Health may waive any specific requirement of this chapter for a period of not more than 6 months if the person seeking the exemption has demonstrated that strict application of the specific requirement would cause undue hardship. For purposes of this chapter, an “undue hardship” is a situation unique to the food establishment where there are no reasonable alternatives to the use of expanded polystyrene disposable food service containers and compliance with this provision would cause significant economic hardship to that food establishment.

14. Who sells acceptable alternatives?

Below is a partial list of vendors that sell non-polystyrene alternative products.

1. Tri Mark United East: Their line of Bio-Plus Earth products (800-556-7338)
2. Amazon.com
3. Biomasspackaging: food trays, deli/takeout containers, cups, lids
4. Hubert: Compostable foam meat trays
5. Pactiv: Corn based compostable meat tray packing
6. Eco-Products: cups, lids, takeout containers
7. US Eco Products: takeout containers
8. Dart: cups, lids, containers
9. Vegware: plant based cups, lids, containers
10. Another option for meat, poultry, and fish packaging is the MINIPAK TORRE line of vacuum sealer machines

For more information, please contact the Andover Health Division at 978-623-8640.



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THE BASICS OF THE THIN FILM PLASTIC CHECKOUT BAG BYLAW

(ARTICLE 55: Thin Film Single Use Plastic Checkout Bag Reduction Bylaw)

1. Why are we doing this?

- Voters at the 2018 Annual Town Meeting approved a citizen petition to enact the bylaw.
- To reduce litter in our environment
- Protect ocean environments and marine life
- Protect waterways from pollution and reduce greenhouse gasses
- Reduce solid waste in the waste stream.

2. When does the bylaw go into effect?

- The Bylaw went into effect on January 1st, 2019.

3. How does this bylaw affect my business and customers?

No Food Establishment in the Town of Andover may provide Thin Film Single Use Plastic Check-Out Bags to customers. Establishments can only provide a...

1. Recyclable Paper bag
 2. Reusable Check Out bag as defined below; or
 3. Cardboard boxes.
- A Food Establishment is an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., is considered a "Food Establishment" for purposes of this ordinance.
 - Thin Film Single Use Check Out Bag" means those bags typically with handles, constructed of high density polyethylene (HDPE), low density polyethylene (LDPE), linear low density polyethylene (LLDPE), polyvinyl chloride (PVC), polyethylene terephthalate (PET) or polypropylene (other than woven and non-woven polypropylene fabric), if said film is less than 4 mils in thickness.

- “Recyclable Paper Bag” shall mean a paper bag, with or without handles that contains at least 40% post-consumer recycled content, and displays in a visible manner on the outside of the bag 1) the word “recyclable” or a symbol identifying the bag as recyclable and 2) a label identifying the bags as being made from post-consumer recycled content and the percentage of post-consumer recycled content in the bag.
- “Reusable Check Out Bag” means a sewn bag with stitched handles that is specifically designed for multiple reuse that (i) can carry twenty-five (25) pounds; (ii) is machine washable or is made of a material that can be cleaned or disinfected one hundred and twenty-five (125) times; (iii) is made of either polyester, polypropylene, cotton or other natural fiber material; and (iv) has a thickness of greater than four (4.0) mils.

4. What kind of bag do I need to supply for my customers?

- You are not required to provide a bag as part of this bylaw. If you provide a bag for your customers the bags must be the following...
 - No Thin Film Single Use Plastic Check Out Bags
 - Recyclable Paper bag
 - Reusable Check Out bag as defined above; or
 - Cardboard boxes

5. Can I charge a fee for a bag?

- Yes, you can charge a fee if you wish too.

6. Are their posters or education materials available?

- Yes, there are posters and other education materials available at the Andover Health Division at 36 Bartlet St. Andover, or you can go to their website at www.andoverma.gov.

7. Are their exemptions?

- Thin film plastic bags typically without handles which are used to contain dry cleaning, newspapers, fruit, vegetables, nuts, grains, candy, wet items and other similar merchandise.
- All Food Establishments must provide at the point of sale, free of charge either Reusable Check Out Bags or recyclable paper bags or both, at the Food Establishment’s option, to any customer participating in the Supplemental Food Program for Women, Infants and Children (WIC) pursuant to M.G.L.c.111, or in the Supplemental Nutrition Assistance Program (SNAP) pursuant to M.G.L.c.18.
- The provisions of this bylaw do not apply to bags used by a non-profit corporation or other charity as defined by M.G.L.c.12 to distribute food, grocery products, clothing or other household items to clients.
- This bylaw does not prevent Food Establishments from selling to customers various types of plastic bags sold in packages containing multiple bags intended for personal use.

8. Where can I buy compliant bags?

- You can find a list of retailers on Andover's Health Department's website at www.andoverma.gov.

9. Do I need to refuse my customer from bringing in their thin film plastic bags (from home) into my store for reuse?

- No, this bylaw is applicable only to businesses. Consumers are encouraged to shop with reusable bags and are not subject to any penalties or enforcement.

10. Is Enforcement apart of the bylaw?

- Yes. Violations include:
 - Initial violation: warning
 - 2nd violation: \$50 fine
 - 3rd violation: \$100 fine and appearance in front of the Board of Health
 - 4th and subsequent violations: \$200

11. Can I apply for a variance?

- The Health Director may exempt a Food Establishment for a period of up to six (6) months upon finding that the bylaw requirements would cause undue hardship. Please contact the Andover Health Division at 978-623-8230 for more information on applying for a variance.

Go to www.andoverma.gov to see/print a copy of this bylaw.

W A R R A N T
THE COMMONWEALTH OF MASSACHUSETTS
ESSEX, SS.

To Either of the Constables of the Town of Andover

Greeting:

In the name of the Commonwealth you are hereby required to notify and warn the Inhabitants of said Town who are qualified to vote in Town Affairs to meet and assemble at the J. Everett Collins Center Auditorium, Andover High School, Shawsheen Road, in said Andover, on

MONDAY, THE TWENTY NINTH DAY OF APRIL, 2019

At seven o'clock P.M. to act upon the following articles:

ARTICLE P1	ANNUAL TOWN ELECTION
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Annual Town Election: Moderator for one year, two Selectmen for three years, two School Committee members for three years, one Housing Authority Member for five years, and one Punchard Free School Trustee for three years, or take any other action related thereto.

On request of the Town Clerk

ARTICLE P2	ELECTION NOT REQUIRED BY BALLOT
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To elect all other officers not required by law to be elected by ballot, or take any other action related thereto.

On request of the Town Clerk

ARTICLE P3	SALARIES OF ELECTED OFFICIALS
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To establish the salaries of the elected officers for the ensuing year, or take any other action related thereto.

On request of the Town Clerk

ARTICLE P4	FISCAL YEAR 2020 BUDGET
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To see if the Town will vote to determine what sums of money the Town will raise and appropriate, including appropriations from available funds, to defray charges and expenses of the Town, including debt and interest, and to provide for a reserve fund for the Fiscal Year beginning July 1, 2019 and ending June 30, 2020, or take any other action related thereto.

On request of the Town Manager

ARTICLE P5	FISCAL YEAR 2020 CAPITAL PROJECTS FUND
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To see if the Town will vote to raise by taxation and appropriate a sum of money for the purpose of funding the Fiscal Year 2020 appropriation for the Capital Projects Fund, or take any other action related thereto.

On request of the Town Manager

ARTICLE P6	BUDGET TRANSFERS
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To see if the Town will vote to transfer from amounts previously appropriated at the April, 2018 Annual Town Meeting as authorized by Massachusetts General Laws Chapter 44, Section 33B, or take any other action related thereto.

On request of the Finance Director

ARTICLE P7	SUPPLEMENTAL BUDGET APPROPRIATIONS
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To see if the Town will vote to transfer from available funds a sum of money to supplement appropriations voted at the April, 2018 Annual Town Meeting, or take any other action related thereto.

On request of the Town Manager

ARTICLE P8	STABILIZATION FUND
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To see if the Town will vote to appropriate and raise from taxation or available funds a sum of money to the Stabilization Fund in accordance with Massachusetts General Laws Chapter 40, Section 5B, as amended by Chapter 46, Sections 14 and 50 of the Acts of 2003, or take any other action related thereto.

On request of the Town Manager

ARTICLE P9	FREE CASH
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To see what amount the Town will vote to permit the Assessors to use in Free Cash to reduce the Fiscal Year 2020 tax rate and to affect appropriations voted at the 2019 Annual Town Meeting, or take any other action related thereto.

On request of the Finance Director

ARTICLE P10	UNEXPENDED APPROPRIATIONS
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To see what disposition shall be made of unexpended appropriations and Free Cash in the treasury, or take any other action related thereto.

On request of the Finance Director

ARTICLE P11	GENERAL HOUSEKEEPING ARTICLES (A THROUGH G)
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To see if the Town will vote the following consent articles, or take any other action related thereto:

- A. Grant Program Authorization** To see if the Town will vote to authorize the Board of Selectmen and/or the Town Manager to apply for, accept and enter into contracts from time to time for the expenditure of any funds allotted to Andover by the Commonwealth of Massachusetts or the U.S. Government under any State or Federal grant program, or take any other action related thereto.

On request of the Town Manager

- B. Road Contracts** To see if the Town will vote to authorize the Town Manager to enter into a contract with the Massachusetts Highway Department Commissioners or the Federal Government for the construction and maintenance of public highways in the Town of Andover for the ensuing year, or take any other action related thereto.

On request of the Town Manager

- C. Town Report** To act upon the report of the Town officers, or take any other action related thereto.

On request of the Town Manager

- D. Property Tax Exemptions** To see if the Town will vote to accept the provisions of Section 4, Chapter 73 of the Acts of 1986 as amended by Chapter 126 of the Acts of 1988 to allow an additional property tax exemption for Fiscal Year 2020 for those persons who qualify for property tax exemptions under Massachusetts General Laws Chapter 59, Section 5, or take any other action related thereto.

On request of the Board of Assessors

- E. Contracts in Excess of Three Years** To see if the Town will vote in accordance with the provisions of Massachusetts General Laws Chapter 30B, Section 12(b) to authorize the Town Manager or the Superintendent of Schools to solicit and award contracts for terms exceeding three years but no greater than five years, including any renewal, extension or option, provided in each instance the longer term is determined to be in the best interests of the Town by a vote of the Board of Selectmen or the School Committee, as appropriate, or take any other action related thereto.

On request of the Town Manager

- F. **Accepting Easements** To see if the Town will vote to authorize the Board of Selectmen and the School Committee to accept grants of easements for streets, water, drainage, sewer and utility purposes or any public purpose on terms and conditions the Board and the Committee deem in the best interests of the Town, or take any other action related thereto.

On request of the Town Manager

- G. **Rescinding of Bond Authorizations** To see if the Town will vote to rescind unissued bond authorizations from prior Town Meetings, or take any other action related thereto.

On request of the Finance Director

ARTICLE P12	GRANTING EASEMENTS
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To see if the Town will vote to authorize the Board of Selectmen and the School Committee to grant easements for water, drainage, sewer and utility purposes or any public purpose on terms and conditions the Board and the Committee deem in the best interests of the Town, or take any other action related thereto.

On request of the Town Manager

ARTICLE P13	UNPAID BILLS
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To see if the Town will vote to transfer from available funds a sum of money to pay unpaid bills for which obligations were incurred in prior fiscal years, or take any other action related thereto.

On request of the Town Accountant

ARTICLE P14	CHAPTER 90 AUTHORIZATIONS
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To see if the Town will vote to authorize the Town to acquire any necessary easements by gift, by purchase or by right of eminent domain for Chapter 90 Highway Construction or any other federal or state aid program for road or sidewalk improvements, or take any other action related thereto.

On request of the Town Manager

ARTICLE P15	JERRY SILVERMAN FIREWORKS
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To see if the Town will vote to appropriate and raise by taxation or available funds the amount of \$14,000 for the Jerry Silverman Fireworks Program as part of the Fourth of July festivities, or take any other action related thereto.

On request of the Town Manager

ARTICLE P16	FISCAL YEAR 2020 REVOLVING ACCOUNTS
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To see if the Town will vote to authorize the following expenditure limits for revolving funds for certain Town departments under Massachusetts General Laws, Chapter 44, Section 53E½ for the fiscal year beginning July 1, 2019, or take any other action related thereto:

Revolving Fund	FY2020 Limit
Community Development & Planning Department	\$30,000
Memorial Hall Library-Lost/Damaged Materials	\$20,000
Health Clinic	\$60,000
Division of Recreation	\$625,000
Division of Youth Services	\$500,000
Field Maintenance	\$150,000
Division of Elder Services	\$225,000
Police Communications	\$50,000
School Photocopy Fees	\$15,000
Compost Program	\$60,000
Solid Waste	\$40,000
Stormwater Management	\$5,000
Fire Rescue	\$100,000
Health Services	\$100,000

On request of the Finance Director

ARTICLE P17	PEG ACCESS AND CABLE RELATED FUND EXPENSES
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To see if the Town will vote to appropriate cable franchise fees and other cable-related revenues to support PEG access services, cable related expenses, and oversight of the cable franchise agreements for fiscal year 2020, which begins on July 1, 2019, or take any other action relative thereto.

On request of the Finance Director

ARTICLE P18	OVERLAY SURPLUS TRANSFER FOR PROPERTY REVALUATION
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To see if the Town will vote to transfer \$32,000 from Overlay Surplus to fund the FY20 property tax revaluation, or take any other action related thereto.

On request of the Finance Director

ARTICLE P19	ELDERLY/DISABLED TRANSPORTATION PROGRAM
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To see if the Town will vote to appropriate and raise by taxation a sum not to exceed \$14,000 for the purpose of continuing to provide for an elderly and disabled transportation subsidy program, or take any other action related thereto.

On request of the Council on Aging

ARTICLE P20	SUPPORT FOR CIVIC EVENTS
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To see if the Town will vote to appropriate and raise by taxation or transfer from available funds a sum not to exceed \$5,000 for the purpose of paying a portion of the municipal costs associated with civic events in the downtown, or take any other action related thereto.

On request of the Town Manager

ARTICLE P21	SPRING GROVE CEMETERY MAINTENANCE
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To see if the Town will vote to transfer the sum of \$6,000 from the Spring Grove Cemetery Perpetual Care reserve account and appropriate the sum of \$6,000 for the purpose of cemetery maintenance, including costs incidental and related thereto, or take any other action related thereto.

On request of the Director of Public Works

ARTICLE P22	STABILIZATION FUND BOND PREMIUM
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To see if the Town will vote to transfer the sum of \$100,000 from the Bond Premium Stabilization Fund to the General Fund to offset non-exempt debt interest payments, or take any other action related thereto.

On request of the Finance Director

ARTICLE P23	WATER AND SEWER VEHICLES
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$225,000 for the purpose of purchasing Water and Sewer vehicles, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P24	WATER MAIN REPLACEMENT PROJECTS
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$4,000,000 for the purpose of purchasing services and materials related to completing water main replacement projects, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P25	HYDRANT REPLACEMENT PROGRAM
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$100,000 for the purpose of purchasing services and materials related to the fire hydrant replacement program, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P26	WATER TREATMENT PLANT PARKING AREA RECONSTRUCTION
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$110,000 for the purpose of purchasing services and materials related to the water treatment plant parking area reconstruction, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P27	WATER TREATMENT PLANT GRANULAR ACTIVATED CARBON (GAC) REPLACEMENT
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$450,000 for the purpose of purchasing services and materials related to granular activated carbon replacement, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P28	PUBLIC WORKS VEHICLES – LARGE
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$380,000 for the purpose of purchasing public works vehicles, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P29	FIRE APPARATUS REPLACEMENT
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$360,000 for the purpose of purchasing fire apparatus, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Fire Chief

ARTICLE P30	MAJOR TOWN BUILDING PROJECTS
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$650,000 for the purpose of purchasing services and materials related to reconstructing, making extraordinary repairs to, and equipping various town buildings, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Facilities

ARTICLE P31	TOWN AND SCHOOL ENERGY EFFICIENCY INITIATIVES
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$420,000 for the purpose of purchasing services and materials related to completing Town and School energy efficiency initiatives, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Facilities

ARTICLE P32	MAJOR SCHOOL PROJECTS
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$920,000 for the purpose of purchasing services and materials related to reconstructing, making extraordinary repairs to, and equipping school buildings, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Facilities

ARTICLE P33	PUBLIC SAFETY MICROWAVE COMMUNICATIONS SYSTEM
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$300,000 for the purpose of purchasing services and materials related to the Public Safety Microwave Communications System, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Fire Chief

ARTICLE P34	TOWN BRIDGE MAINTENANCE AND EVALUATION
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$500,000 for the purpose of purchasing services and materials related to town bridge maintenance and evaluation, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P35	PARKING AND HARDSCAPE IMPROVEMENTS
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$400,000 for the purpose of purchasing services and materials related to making improvements to parking and hardscapes, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Planning Director

ARTICLE P36	SENIOR CENTER AT PUNCHARD RENOVATION AND CONSTRUCTION
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$4,500,000 for the purpose of purchasing professional services related to the design, renovation and construction, and for the construction of the Senior Center at Punchard, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Town Manager

ARTICLE P37	ELDER SERVICES PROGRAM STABILIZATION FUND TRANSFER
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To see if the Town will authorize the transfer of the sum of \$700,000 from the Elder Services Program Stabilization Fund to fund the construction of the renovation of the Senior Center at Punchard or offset the borrowing costs of the Senior Center at Punchard renovation construction, or to take any action related thereto.

On request of the Elder Services Task Force

ARTICLE P38	STUDENT DEVICE REFRESH
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$372,870 for the purpose of purchasing services and materials related to replacing student technology devices, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Chief Information Officer

ARTICLE P39	PARKING VEHICLE REPLACEMENT
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$40,000 for purpose of purchasing a parking enforcement vehicle, including any other costs incidental and related thereto, or take any other action related thereto.

On request of the Police Chief

ARTICLE P40	DISPOSITION OF BUILDING AT 161 ANDOVER STREET
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To see if the Town will vote to transfer the care, custody and control of the building situated on the property at 161 Andover Street to the Board of Selectmen for the purpose of removing the building and to authorize the Board of Selectmen to remove the building from the property, either by the sale or conveyance of the building on terms and conditions they deem to be in the best interest of the Town, even if the Town receives no financial payment, or by demolition of the building, if the Board of Selectmen determines that demolition of the building is in the best interest of the Town, or take any other action related thereto.

On request of the Town Manager

ARTICLE P41	DISPOSITION OF BUILDING AT 163 ANDOVER STREET
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To see if the Town will vote to transfer the care, custody and control of the buildings situated on the property at the Ballardvale Fire Station at 163 Andover Street to the Board of Selectmen for the purpose of removing the buildings and to authorize the Board of Selectmen to remove the buildings from the property, either by the sale or conveyance of the buildings on terms and conditions they deem to be in the best interest of the Town, even if the Town receives no financial payment, or by demolition of the buildings, if the Board of Selectmen determines that demolition of the buildings is in the best interest of the Town, or take any other action related thereto.

On request of the Town Manager

ARTICLE P42	CHANGE FROM “BOARD OF SELECTMEN” TO “SELECT BOARD”
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To see if the Town will vote to take the following action in order to change the title of Board of Selectmen to Select Board: to amend the Town’s General Bylaws by striking the words “Board of Selectmen” wherever they appear and inserting the word “Select Board” in place thereof, or take any action related thereto.

On request of the Board of Selectmen

ARTICLE P43	CHANGE FROM “BOARD OF SELECTMEN” TO “SELECT BOARD”
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To petition the Legislature to pass a Special Act to amend the Town Charter by striking the words “Board of Selectmen” wherever they appear and inserting the word “Select Board” in place thereof, and to provide that, with respect to the Town of Andover that wherever the words “Board of Selectmen” or “Selectman” appear in the Constitution, General or Special laws of the Commonwealth of Massachusetts, that such word shall apply to the Select Board of the Town of Andover and its members, provided that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition, or take any action related thereto.

On request of the Board of Selectmen

ARTICLE P44	CHANGE FROM “BOARD OF SELECTMEN” TO “SELECT BOARD”
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To see if the Town will vote to take the following action in order to change the title of Board of Selectmen to Select Board: to amend the Town’s Zoning Bylaws by striking the words “Board of Selectmen” wherever they appear and inserting the word “Select Board” in place thereof; or take any action related thereto.

On request of the Board of Selectmen

ARTICLE P45	AMEND ZONING BYLAW ARTICLE VIII: SOLAR ENERGY
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To see if the Town of Andover will vote to amend the Andover Zoning Bylaw, Article VIII, Section 3.1.3 Table of Use Regulations Appendix A Table 1, Section 4.2 Accessory Building and Structures, and Section 10 Definitions by adding the following:

Add to Section 3.1.3 Table of Use Regulations Appendix A Table 1

E. Other Main Uses	SRA	SRB	SRC	APT	LS	OP	GB	MU	IG	IA	ID	ID2
9. Solar Energy Systems												
a. Ground Mounted-Small Scale as an accessory use (See section 4.2.5)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
b. Ground Mounted-Small Scale - Carport	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
c. Roof/Building Mounted	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
d. Ground Mounted-Large Scale (See Section 10 Major Non-Residential Project)	N	N	N	N	N	N	N	N	PB	PB	PB	PB

Add Section 4.2.5 Solar Energy Ground Mounted

Ground Mounted Small Scale as an accessory use and Ground Mounted - Small Scale - Carport shall be allowed on properties as an accessory use in rear yards and side yards, but not in front yards, provided such uses are not located nearer than 10 feet to any property line of the rear yard, they comply with the minimum setback requirements for side yards in the particular district, and they do not exceed 20 feet in height.

Add to Section 10 Definitions

Solar Energy System Ground Mounted – Small Scale - A solar photovoltaic system that is structurally mounted on the ground (i.e., not roof mounted) and has a minimum output of electric power production in Direct Current (i.e. Rated Nameplate Capacity) of less than 250 kW DC or less than 1,000 square feet of solar panel area or less.

Solar Energy System Ground Mounted – Small Scale - A solar photovoltaic system that is structurally mounted on the ground (i.e., not roof mounted) and has a maximum output of electric power production in Direct Current (i.e. Rated Nameplate Capacity) of less than 250 kW DC or less than 1,000 square feet of solar panel area or less.

Solar Energy System Roof/Building Mounted - A solar photovoltaic system that is structurally mounted on the roof or side of the building

Solar Energy System Carport System – A Solar Energy System Ground Mounted that also provides cover and shade for parking and/or pedestrian areas.

Add d. to Section 10 Major Non-residential Project definition

d. A proposal to construct a Solar Energy System Ground Mounted - Large Scale.

And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of By-Laws, or take any other action related thereto.

On request of the Planning Board

ARTICLE P46	AMEND ANDOVER ZONING BYLAW SECTION 9.6.3: SIGNS
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To see if the town will amend Section 9.6.3. of the Zoning Bylaw by deleting the words “or a sign larger than four square feet” in the first sentence and inserting in place thereof with the following “signs as listed in Section 5.2.4.3. of this Bylaw”

On request of the Planning Director

ARTICLE P47	AMEND ANDOVER ZONING BYLAW DEFINITIONS
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To see if the Town of Andover will vote to amend the Andover Zoning Bylaw, Article VIII, Section 10 Definitions by deleting the definition of “Sign” and replace with the following:

Sign: A sign shall consist of any of the following elements:

- a. Lettering, words, numerals, emblems, trademarks, logos, images, drawings, pictures, graphics, pennants, streamers, or other devices of any material or construction, however displayed, whether as an independent structure or as part of a building or other structure;
- b. Any visual device that informs, attracts or draws the attention of persons outside the premises on which the device is located, including messages within or attached to windows and doors;
- c. Any lighting device or fixture, whether integral to the building façade or attached to it, which attracts or draws attention to the building or structure on which it is located and lighting of a building façade or its architectural elements. Sconces, attached to a ground floor of building, which comply with all of the lighting regulations of this bylaw, shall not be considered a sign.

On request of the Planning Director

ARTICLE P48	AMEND ANDOVER ZONING BYLAW ARTICLE VIII
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To see if the Town of Andover will vote to amend the Andover Zoning Bylaw, Article VIII, Section 5.2 by deleting the current text and replace in its entirety with the following:

5.2 SIGNS.

5.2.1 Findings and Purpose.

A. Findings

1. The regulation of signs is necessary to serve the substantial governmental interests of the Town of Andover in protecting its natural, scenic, historic, cultural, and aesthetic qualities by preserving and enhancing the appearance of commercial, residential, and industrial buildings and by preserving and enhancing the appearance of public streets, parks and other public properties, while minimizing sign clutter and excessive illumination.
2. The regulation of signs will improve the town's appearance; make the town's commercial, residential, and industrial areas more attractive for development; and by doing so enhance the economic climate of the town.
3. The regulations set forth herein will directly advance public safety by protecting driver's sightlines, reducing glare and reducing driver distractions.
4. The public interest is served by signs that identify the products or services provided at that specific location.

B. Purpose

The purpose of this bylaw is to regulate the quantity, size, location and illumination of signs. Signs must be regulated to:

1. Preserve the historical ambiance and established aesthetic character of the town, including the unique aesthetic character of every neighborhood;
2. Prevent conditions which could contribute to visual clutter and blight;
3. Restrict signs and illumination which overload the public's capacity to receive information or which increase the probability of accidents by distracting attention or obstructing visibility;
4. Require accurate communication that informs the public;

5. Minimize adverse effects on nearby public and private property;
6. Prevent excessive illumination and light pollution to help conserve energy and foster an equitable aesthetic environment where every business, large or small will be noticed;
7. Promote a desirable aesthetic environment to attract new business.

5.2.2 Definitions. In this bylaw, the following terms shall apply:

1. **Attached Sign:** A sign that is either attached parallel to the facade of a building facing in the same direction as the facade, or displayed on an awning or fixed canopy of a building.
2. **Awning or Fixed Canopy:** A fixed or retractable structure, whether made of canvas, plastic, metal or other material, placed over a door or window. Awnings and fixed canopies themselves shall not be considered signs, but lettering, symbols or graphic elements appearing on the body of awnings and fixed canopies shall constitute an Attached Sign. The sign area of an awning or fixed canopy shall consist of the area encompassed by any lettering, symbols or graphic elements distinct from the background.
3. **Double-sided Sign:** A freestanding or projecting sign having two parallel opposite faces separated by a distance of not more than 12 inches. A sign with two opposite faces that are not parallel shall be considered a double-sided sign if the two faces are joined to each other, or to a common support structure, at one end, and the angle of separation between the two faces does not exceed 30°.
4. **Freestanding Sign:** A sign that is supported by its own support structure and is not attached to a building or other structure.
5. **Internally Illuminated Sign:** A sign that is illuminated by a light source internal to the sign utilizing translucent panels, canvas, fabric or other similar components to create an image by allowing light to pass through.
6. **Monument Sign:** A type of freestanding sign integrated into an ornamental base usually made of stone or brick oriented toward pedestrians and vehicles.
7. **Municipal Property:** Land owned by the Town of Andover whether developed or open space including parks, play fields and schools.
8. **Municipal Sign:** A sign on Municipal Property.
9. **Nonconforming Sign:** A sign, including its support structure, that does not conform to the regulations prescribed in this bylaw, but which was in existence at the time the regulations became effective and was lawful at the time it was installed or erected.
10. **Open Space:** Public or Private lands accessible to the public at no cost, for passive recreation such as hiking, bird watching, fishing, photography, cross country skiing, biking or other activities which do not alter or disturb the terrain and which conserve natural and scenic resources, protect air, streams or water supply, and enhance the value of the land to the public.
11. **Projecting Sign:** A sign attached to and mounted perpendicular to the façade of a building.
12. **Reverse lit/back lit/halo Sign:** An illuminated sign in which the illumination emanates from behind or at the perimeter of the graphic elements or lettering of the sign message, so as to form a halo-like effect around the graphics and/or lettering of the sign.
13. **Sign:** A sign shall consist of any of the following elements:
 - a. Lettering, words, numerals, emblems, trademarks, logos, images, drawings, pictures, graphics, pennants, streamers, or other devices of any material or construction, however displayed, whether as an independent structure or as part of a building or other structure;
 - b. Any visual device that informs, attracts or draws the attention of persons outside the premises on which the device is located, including messages within or attached to windows and doors;
 - c. Any lighting device or fixture, whether integral to the building façade or attached to it, which attracts or draws attention to the building or structure on which it is located; also, lighting of a

building façade or its architectural elements. Sconces, attached to a ground floor of a building, which comply with all of the lighting regulations of this bylaw, shall not be considered a sign.

14. **Sign Area:** The area of the smallest horizontal or vertical rectangle enclosing the entire display area of the sign. The display area of a sign is the entire area, different in color and/or composition from the facade or common trim of the building, used to frame or provide a background for the sign. The measurable display area shall also include decoratively lighted sign support structures if such elements are present. The area of double-sided signs shall be calculated using the area of only one face of the sign.

15. **Sign Height:** The distance measured from the ground level at the base of the sign to the top of the sign or top of the support structure, whichever is higher. For freestanding signs, the land under or surrounding the sign may not be built up or elevated to reduce the calculated height of the sign.

16. **Sign Support Structure:** Any device, such as a pole, bracket or post, used to support a sign. The sign support structure shall be excluded from the calculation of the sign area if it a.) contains none of the elements described in § 5.2.2.13 above, and b.), for freestanding signs, the total width of the support structure is less than twenty-five percent (25%) of the width of the sign.

17. **Temporary Sign:** A non-permanent sign of any shape or configuration that is self-supporting and not permanently fixed to the ground or to another structure that is displayed for a limited duration. Temporary signs may be exterior (displayed on the exterior or outside of a structure) or interior (displayed from the inside of a structure, viewed from the outside through a window or other opening). Exterior signs shall be securely anchored so as not to be dislodged or blow over.

5.2.3 General Provisions.

1. *Exemptions.* The following signs shall be exempt from the provisions of this bylaw:

- a. Flags of any government, except when they are displayed in connection with the advertising or promotion of a commercial product or service.
- b. Legal notices required by the town, state or federal government.
- c. Integral decorative and architectural features of buildings, historic lettering/trademarks and historic plaques.
- d. On-premises signs, having an area not to exceed two (2) square feet, and a height not to exceed four (4) feet, and intended only to direct traffic and parking or warn of a safety hazard.
- e. On valances of awnings or fixed canopies, lettering, symbols, or graphic elements not exceeding six (6) inches in height and not exceeding seventy-five percent (75%) of the height of the valance.
- f. On awnings or fixed canopies, one (1) symbol or graphic element, without text, not exceeding five (5) square feet per awning.
- g. Signs located on facilities or land under the care and control of the Massachusetts Bay Transportation Authority (MBTA).
- h. Banners installed subject to the provisions of the Andover General Bylaw, Article XII § 44.

2. *Maintenance.* All signs shall be maintained in a safe and well maintained condition to the satisfaction of the Inspector of Buildings and in accordance with the Commonwealth of Massachusetts State Building Code, 780 CMR.

3. *Nonconforming Signs.*

- a. Any nonconforming sign and/or support structure if legally permitted and installed or erected prior to the adoption of this bylaw, or any amendments thereto, which remains un-altered in any way, may be continued and maintained, subject to the provisions of Section 3.3.6. of this bylaw.
- b. Nonconforming signs shall not be enlarged, rebuilt, restored or altered except in conformity with this bylaw.

c. Any nonconforming sign which has been destroyed or damaged to the extent that the cost of repair or restoration will exceed 1/3 of the replacement value as of the date of such damage or destruction shall not be repaired, rebuilt, restored or altered except in conformity with this bylaw.

4. *Liability.* No sign shall project more than five feet over any public right-of-way or other municipal property. Any sign projecting over a public right-of-way shall be covered by liability insurance in the amount of \$2,000,000 as verified by a certificate of insurance filed with the Town Clerk naming the Town of Andover as additional insured.

5. *Enforcement:* The Building Inspector shall give written notice of violations. Failure to conform to the sign regulations within 30 days of the notice of violations may result in fines in accordance with Section 9.1 of this Bylaw. Signs on the public right-of-way or public property may be removed immediately by the Inspector of Buildings or his representative.

6. *Special Permits:* The Board of Appeals may grant special permits to allow signs not in conformity with this bylaw in specific cases where necessary to comply with other applicable laws; and/or where unnecessary hardship will result to the owner of the sign provided that the requested relief will not substantially derogate from the intent and purpose of this bylaw.

7. *Criteria for a Special Permit.* The Special Permit Granting Authority shall be the Board of Appeals. When acting upon an application for a special permit, the Board of Appeals shall consider the following:

- a. The character of the proposed sign and its suitability to the building or structure and the surrounding neighborhood.
- b. Its relationship to the architectural style, size and scale of the building or structure and the surrounding neighborhood.
- c. The impact of the size and illumination of the sign on other establishments and properties in the surrounding neighborhood.
- d. The recommendations of the Design Review Board and such other factors as the Board of Appeals deems appropriate in order to assure that the public interest is protected.

5.2.4 Sign Permit.

1. Unless specifically exempt or provided for elsewhere in this section, no sign, including municipal signs, shall be installed, erected, enlarged, redesigned or structurally altered without a sign permit issued by the Inspector of Buildings.

2. A completed sign permit application, fulfilling all requirements for requested materials and documents and specifying all pertinent dimensions and materials, shall be submitted to the Inspector of Buildings prior to installation or alteration of any sign.

3. Review by the Design Review Board (DRB). Pursuant to Section 9.6.2. and 9.6.3., the DRB shall review an application for: (a) a municipal sign in any district; (b) in non-residential districts, permanent signs greater than four (4) square feet, including but not limited to signage associated with uses requiring a building permit, a special permit, or a variance; (c) in SRA, SRB and SRC Districts, signage requiring a special permit or variance or associated with uses subject to DRB review (see 9.6.3.); (d) and in APT Districts, all permanent signs over four (4) square feet. The DRB shall submit its recommendations, if any, to the Inspector of Buildings. Applications for review by the DRB shall be submitted on an application form specified by the DRB.

5.2.5 Prohibited Signs and Devices. Any sign not explicitly allowed in this bylaw shall be prohibited. In addition:

1. No sign shall be lighted, except by a steady external and stationary light source which is fully shielded, and directed solely at the sign, and which has a CCT (Color Control Temperature) not exceeding three thousand (3,000k) Kelvins.
2. No illumination shall be allowed which casts glare onto any premises or onto any portion of a way so as to create a hazard.
3. No signs shall be illuminated between the hours of 11:00 p.m. and 7:00 a.m. unless the establishment is open to the public or unless authorized by a special permit. Public safety signs are excluded (e.g. street numbers, hazard signs) as are ATM machines and gas pumps.
4. No sign shall be illuminated by any color other than colorless or white light except for temporary holiday lighting. The CCT shall not exceed three thousand (3,000k) Kelvins.
5. No animated, revolving, flashing, audible, changing copy, video, inflatable, laser-projected, moving, feather style, changing light intensity, reverse lit/back lit/halo, exposed neon or similar exposed gaseous, tube illuminated signs shall be allowed (excluding holiday decorations).
6. Off-premises signs. Signs which advertise a commercial activity, business, product or service not produced or conducted on the premises upon which the sign is located shall be prohibited.
7. No permanent or temporary sign shall be installed which obstructs visibility for pedestrians or motorists at any intersection, driveway, sidewalk or crosswalk.
8. No exterior attached sign shall cover any portion of a window or door including the casing.
9. No sign shall be allowed on the roof of any building and no portion of a sign shall extend above the lowest point of the roof or above the parapet of the building to which it is attached.
10. No sign owned by an entity other than the Town of Andover (permanent or temporary) shall be installed on public Open Space, Municipal Property or on public rights-of-way, unless otherwise approved by the Board of Selectmen upon demonstration of a hardship.

5.2.6 Permanent Signs allowed in all zoning districts.

The following signs are allowed in all zoning districts and do not require a permit. (See specific permit requirements for each zoning district in § 5.2.8 through § 5.2.12):

1. Signs identifying the street address of a building shall not require a sign permit if they do not exceed two square feet in total area.
2. Open Space signs. The owners or stewards of Open Space land may install non-illuminated signs on Open Space. Signs with an area not exceeding thirty-five (35) square feet with no commercial speech shall not require a sign permit.

5.2.7 Temporary Signs allowed in all zoning districts.

1. Temporary signs shall not require a sign permit.
 - a. Temporary signs shall conform to all regulations within the zone where they are located (e.g. size, height, setbacks) unless otherwise specified in this section.
 - b. Signs shall be located on private property and shall not be illuminated.
 - c. Permanently installed sign support structures erected solely for the display of temporary signs are prohibited.
2. Open Space, Municipal Properties and Conservation land: only the owners or stewards of the land may install temporary signs.
3. Residential Districts
 - a. Signs shall be located a minimum of three (3) feet from the property line.
 - b. One (1) temporary sign shall be allowed for each commercial or construction activity (including associated sub-contractors) while such activity is occurring on the residential property (e.g. real

estate, building contractors and sub-contractors). Additional commercial signs shall not be allowed.

4. Business and Industrial Districts

- a. Interior temporary signs shall not exceed thirty percent (30%) of the transparent area of the windows and/or doors on which they are displayed.
- b. The maximum allowed exterior signage shall be no greater than one (1) square foot per twenty feet of street frontage. For buildings with more than one occupant, the sign area for each occupant shall be proportional to the facade associated with each occupant's use.

5.2.8 Signs in Residential Districts (SRA, SRB, SRC, APT).

1. Single Family Residential Districts (SRA, SRB, and SRC). In addition to the signs allowed in §5.2.6 and §5.2.7 the following signs are allowed:

- a. One permanent sign with an area not to exceed two (2) square feet, either attached or freestanding, shall not require a sign permit.
- b. A permanent sign, either attached or freestanding, that exceeds two (2) square feet in area may be allowed by special permit. In no case, however, shall the sign area exceed six (6) square feet, or the sign height exceed three (3) feet.
- c. Monument signs shall require a special permit.

2. Apartment Districts (APT). In addition to the signs allowed in § 5.2.6, the following signs are allowed:

- a. One freestanding sign on each street on which the complex has street frontage, provided that the frontage also provides vehicular or pedestrian access to the complex. The sign area shall not exceed fifteen (15) square feet and the sign height shall not exceed six (6) feet.

5.2.9 Signs in General Business (GB) and Mixed Use (MU) Districts

In addition to the signs allowed in § 5.2.6 the following signs are allowed for commercial or business uses with a permit:

1. One (1) attached sign shall be allowed, oriented to each street, courtyard, and parking lot on which the commercial or business use has a facade, providing that such facade has either a window or a direct entryway into the use's space.

- a. The sign may be either attached flat against the building or placed on an awning or fixed canopy.
- b. The sign area of a flat attached sign for each individual business use shall not exceed fifteen percent (15%) in the GB District or ten percent (10%) in the MU District of the portion of the facade associated with that business.

c. Flat attached signs oriented to the street shall not exceed fifty (50) square feet in the GB District or eighty (80) square feet in the MU District.

d. In the GB District only, flat attached signs oriented to a parking lot or a courtyard shall not exceed twenty-five (25) square feet in area unless they mark the primary entrance to a building or establishment, in which case the sign area shall not exceed fifty (50) square feet.

e. Attached signs displayed on the body of awnings or fixed canopies shall not exceed twenty percent (20%) of the area of the awning, and in no case shall they exceed twenty-five (25) square feet.

2. In addition to the above, each building that is set back a minimum of five (5) feet from the property line may install one freestanding sign, with a sign area not to exceed twelve (12) square feet in GB or twenty-five (25) square feet in MU. The sign height shall not exceed five (5) feet above ground level in GB or eight (8) feet above ground level in MU.

3. In addition to the above, each business may install one (1) projecting sign on each facade providing that such facade has either a window or a direct entryway into the use's space, subject to the following conditions:

- a. The sign area shall not exceed nine (9) square feet, excluding the sign support structure.
- b. The bottom of a projecting sign shall be at least eight (8) feet above the ground or public way. The top of the sign shall be no more than twenty-five (25) feet above the ground or public way.
- c. No sign shall project more than five (5) feet from the facade to which it is attached.
- d. A larger sign may be allowed by special permit, but in no case shall a sign area exceed fifteen (15) square feet.

4. A building occupied by multiple commercial or business uses may install a single directory sign on each facade with street frontage or parking lot, either attached to the facade of the building or projecting from the building, which identifies those occupants. The total area of such a directory sign shall not exceed one (1) square foot per occupant.

5. Unlighted graphics, lettering or symbols with transparent background mounted on the inside of windows or transparent entry doors shall not exceed thirty percent (30%) of the glass or transparent area; letters and numbers shall not exceed three (3) inches in height. Such signage does not require a sign permit.

5.2.10 Signs in Office Park Districts (OP) and Limited Service Districts (LS).

In addition to the signs allowed in § 5.2.6 the following signs are allowed with a permit:

1. One (1) freestanding sign shall be allowed for each street upon which a building or complex has frontage:

- a. The sign area shall not exceed twenty-five (25) square feet and the sign height shall not exceed eight (8) feet.
- b. Properties along route 93 and route 495, with a special permit, may have a larger sign if required for legibility but under no circumstances shall it exceed twelve (12) feet in height. (See 5.2.5. Prohibited Signs and Devices.)

2. In addition to the above, one (1) attached sign is allowed for each street upon which a building or complex has frontage. The sign may be either attached flat against the wall or placed on an awning or fixed canopy. The sign area of a flat attached sign shall not exceed twenty-five (25) square feet. Signs displayed on the body of awnings or fixed canopies shall not exceed twenty (20%) percent of the area of the awning, and in no case shall they exceed twenty-five (25) square feet.

3. In addition to the above, each business shall be limited to one (1) sign (attached or projecting) for each street and parking lot on which the business has an entryway. The sign area shall not exceed four (4) square feet.

4. The Board of Appeals may grant, subject to the criteria of 5.2.3.7., a special permit for a second sign on a building facing a limited access, high-speed highway.

5.2.11 Signs in Industrial G (IG) Districts. In addition to the signs allowed in 5.2.3.7., the following signs are allowed:

1. One (1) or more signs attached flat against the wall or placed on an awning or fixed canopy of a building for each facade that provides direct entry into the building, subject to the following conditions:

- a. The sign area of a flat attached sign shall not exceed twenty percent (20%) of the area of the side of the building to which it is attached or eighty (80) square feet, whichever is less. Attached signs displayed on the body of awnings or fixed canopies shall not exceed twenty percent (20%)

of the area of the awning or fixed canopy, and in no case shall they exceed twenty-five (25) square feet.

b. No portion of a sign shall extend above the lowest point of the roof or above the parapet of the building to which it is attached. Signs displayed on awnings or fixed canopies shall not exceed twenty percent (20%) of the area of the awning, and in no case shall they exceed twenty-five (25) square feet.

2. In addition to the above, one (1) freestanding sign for each street on which the property has frontage, subject to the following conditions:

a. The area of each sign shall not exceed fifty (50) square feet.

b. No part of any such sign shall be more than eight (8) feet above ground level.

c. No sign shall be located closer than five (5) feet to any property line.

3. The Board of Appeals may grant, subject to the criteria of 5.2.4.2, a special permit for a larger sign. (See 5.2.5. Prohibited Signs and Devices.)

5.2.12 Signs in Industrial A (IA) Districts. In addition to signs allowed in 5.2.6, the following signs are allowed:

1. One (1) or more signs attached flat against the wall or placed on an awning or fixed canopy of a building for each façade that provides direct entry into the building, subject to the following conditions:

a. The total area of all such signs on a building shall not exceed twenty percent (20%) of the area of the side of the building to which they are attached, or two hundred (200) square feet, whichever is less. Attached signs displayed on the body of awnings or fixed canopies shall not exceed twenty percent (20%) of the area of the awning or fixed canopy, and in no case shall they exceed twenty-five (25) square feet.

b. No portion of the sign shall extend above the lowest point of the roof or above the parapet of the building to which it is attached.

2. One (1) freestanding sign for each street on which the property fronts, subject to the following conditions:

a. The area of each sign shall not exceed one hundred (100) square feet.

b. No part of any such sign shall be more than fifteen (15) feet above ground level.

c. No such sign shall be located closer than five (5) feet to the property line.

5.2.13 Signs in Industrial D (ID) Districts. In addition to the signs allowed in 5.2.6, the following signs are allowed:

1. One (1) or more signs attached flat against the wall or placed on an awning or fixed canopy of a building, subject to the following conditions:

a. The total area of all such signs on a building shall not exceed ten percent (10%) of the area of the side of the building to which they are attached, or two hundred (200) square feet, whichever is less. Attached signs displayed the body of awnings or canopies shall not exceed twenty percent (20%) of the area of the awning or fixed canopy, and in no case shall they exceed twenty-five (25) square feet.

b. No portion of the sign shall extend above the lowest point of the roof or above the parapet of the building to which it is attached.

2. In addition to the above, one (1) freestanding sign for each street on which the property fronts, subject to the following conditions:

a. The area of each sign shall not exceed one hundred (100) square feet.

b. No part of any such sign shall be more than twelve (12) feet above ground level.

c. No such sign shall be located closer than five (5) feet to any property line or the line of any street or way.

5.2.14 Signs in Industrial Two (ID2) District. In addition to the signs allowed in 5.2.6, the following signs are allowed:

1. One (1) attached sign shall be allowed, oriented to each street, courtyard, and parking lot on which the commercial or business use has a façade, providing that such façade has either a window or a direct entryway into the use's space.
 - a. The sign may be either attached flat against the building or placed on an awning or fixed canopy.
 - b. The sign area of a flat attached sign for each individual business use shall not exceed ten percent (10%) of the portion of the façade associated with that use.
 - c. Flat attached signs oriented to the street shall not exceed eighty (80) square feet.
 - d. Attached signs displayed on the body of awnings or fixed canopies shall not exceed twenty percent (20%) of the area of the awning or fixed canopy, and in no case shall they exceed twenty-five (25) square feet.
2. In addition to the above, each business may install one (1) projecting sign on each façade providing that such façade has either a window or a direct entryway into the use's space, subject to the following conditions:
 - a. The sign area shall not exceed nine (9) square feet, excluding the sign support structure.
 - b. The bottom of a projecting sign shall be at least eight (8) feet above the ground or public way, and the top of the sign shall be no more than twenty-five (25) feet from the ground or public way.
 - c. No sign shall project more than five (5) feet from the façade to which it is attached.
 - d. A larger sign may be allowed by special permit, but in no case shall a sign area exceed fifteen (15) square feet.
3. A building occupied by multiple commercial or business uses may install one (1) directory sign on each façade with street frontage or parking lot, either attached flat against the façade of a building or projecting from the façade of the building, identifying those occupants. The total area of such a directory sign shall not exceed one square foot per occupant.
4. Unlighted graphics, lettering or symbols with transparent background mounted on the inside of windows or transparent entry doors shall not exceed thirty percent (30%) of the glass or transparent area; letters and numbers shall not exceed three inches in height. Such signage does not require a sign permit.

5.2.15 Design Guidelines for Signs.

The following are further means by which the objectives stated in Section 5.2.1 can be served. These guidelines are not mandatory, but the degree of compliance with them shall be considered by the Special Permit Granting Authority in acting upon special permits, and by the Design Review Board as authorized hereunder.

1. Efficient Communication.
 - a. Sign content normally should not occupy more than forty percent (40%) of the sign background, whether displayed on a sign board or displayed on an architectural element of a building.
 - b. Non-verbal devices should be considered, in addition to text, as such graphic images can provide rapid and effective communication as well as character and enhance the owner's brand.
2. Environmental Relationship.
 - a. Sign brightness should not be excessive in relation to ambient lighting levels and the CCT shall not exceed 3000k. (See 5.2.5.4)
3. Relationship to Buildings.

- a. Signs should be sized and located so as to not interrupt, obscure or hide the continuity of columns, cornices, eaves, sill lines or other architectural elements of a building, and wherever possible should reflect and emphasize the building's architectural form.
- b. Sign materials, colors and lettering should be representative of and appropriate to the character of the building to which it is attached.

5.2.16 Severability.

The provisions in this bylaw are severable. If any part of this bylaw is declared to be unconstitutional or invalid by any court, the remaining parts of this bylaw will remain in full force and effect.

And further that non-substantive changes to the numbering of this by-law be permitted in order that it be in compliance with the numbering format of the Andover Code of By-laws, or take any other action related thereto.

On request of the Planning Director

ARTICLE P49	SPECIAL PERMIT LAPSE
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To see if the Town will vote to amend Section 9.4.7 of the Town's Zoning Bylaw, Special Permit Lapse by deleting "24 months" and replacing it with "36 months" and to add after the word "construction" "pursuant to permit", to read:

9.4.7 Lapse

Special permits shall lapse if a substantial use thereof or construction pursuant to permit thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

And further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

On request of the Planning Director

ARTICLE P50	COLUMBIA GAS REIMBURSEMENT OF COSTS INCURRED
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To see if the Town will vote to transfer a sum of money from the Insurance Proceeds in Excess of \$150,000 account and appropriate it to fund various general fund operating account deficits due to the Columbia Gas Disaster or take any other action related thereto.

On request of the Finance Director

ARTICLE P51	SANBORN SCHOOL SITE IMPROVEMENTS
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To see if the Town will vote to amend its action taken under Article 40 of the Warrant at the 2015 Annual Town Meeting, which vote authorized the borrowing of \$319,000 for the purpose of paying for the design and engineering services for making school site safety, circulation, drainage and infrastructure improvements at the West Elementary School, including the payment of all costs

incidental and related thereto, so that such funds may, instead, be borrowed and expended to pay costs of design, engineering and construction services for the Sanborn Elementary School, including the payment of all other costs incidental and related thereto, or to take any other action relative thereto.

On request of the Director of Facilities

ARTICLE P52	ANDOVER HIGH SCHOOL FEASIBILITY STUDY COMMITTEE
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$210,000 for the purpose of purchasing services and materials related to the Andover High School Feasibility Study, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of the Andover School Committee

ARTICLE P53	SEWER INFLOW AND INFILTRATION REDUCTION PROJECT
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To see if the Town will vote to appropriate the sum of \$284,934.44 by repurposing funds remaining from the following articles: Article 41 of the 2007 Annual Town Meeting, Article 33 of the 2008 Annual Town Meeting, and Article 46 of the Annual Town Meeting, so that such funds may, instead, be used to pay costs of the Sewer Inflow and Infiltration Reduction Project, including all costs incidental and related thereto, or to take any other action related thereto.

On request of the Director of Public Works

ARTICLE P54	SIGN SHOP REVOLVING FUND
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To see if the Town will vote to amend Section 48 of Article XII and establish and authorize a new revolving fund for use by certain town/city departments, boards, committees, agencies or officers under Massachusetts General Law Chapter 44, Section 53E 1/2, and amend the table of Authorized Revolving Funds by inserting a new row after "Health Services" to read:

Sign Shop	Director of Public Works	Sign production revenue	Sign production and supplies expenses	Fiscal Year 2020 and subsequent years
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On request of the Director of Public Works

ARTICLE P55	RIVER ROAD SENIOR RESIDENTIAL COMMUNITY OVERLAY DISTRICT CHANGE IN AGE RESTRICTIONS
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To see if the Town will vote to amend the Zoning Bylaw, Article VIII, Section 8.8 in order to allow residents 55 and older to live in the Senior Residential Community Overlay District on River Road by deleting the age of "62" wherever it appears in Zoning Bylaw Section 8.8 and replacing it with the age of "55". The resulting Subsections of Section 8.8, as so amended, to read as follows:

8.8.1 Purpose.

The intent of this section is to allow flexibility in the development of parcels for housing and related services for persons 55 or older, with particular interest in meeting the needs of residents of Andover. The objectives of this section are to achieve the following purposes:

8.8.3 Definitions.

For the purpose of this section of the by-law, the following definitions shall apply:

Senior – Any person having reached the age of fifty-five (55) years.

Senior Household – Any household having at least one person 55 years or older.

Aging Population – Population having reached the age of 55 years or older.

8.8.5 Dimensional Requirements and Design Standards.

15. Age Restrictions. All dwelling units within the SRCOD shall require at least one resident to have attained the age of 55 and no resident shall be under the age of 18. Prior to issuance of the first building permit for a building, the applicant shall record a restriction, approved by Town Counsel, that all units shall require at least one resident to have attained the age of 55 and that no resident of a dwelling unit shall be under the age of 18.

8.8.8. Bonus.

Affordable Housing: The objective is to provide additional alternative affordable housing options for seniors in Andover having reached the age of fifty-five (55). The number of dwelling units (Independent Living, Congregate Care or Assisted Living Units) may be increased by two (2) market rate dwelling units for each one (1) additional affordable unit.

On request of Mark Johnson and others

ARTICLE P56	GREENWOOD ROAD SIDEWALK
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To see if the Town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$888,000 for the purpose of constructing a sidewalk on Greenwood Road between Lowell Street and High Plain Road, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of Deepa Naik and others

ARTICLE P57	SPRING GROVE CEMETERY TRANSFER OF PROPERTY
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To see if the Town will vote to transfer the care, custody and control of the Property located on Spring Gove Road shown as "Area to be conveyed from the inhabitants of the Town of Andover to J&J Ball Realty Trust Area = 8,496 S.F." shown on a "Plan of Land in Andover, Massachusetts showing Land to be Conveyed from the Inhabitants of the Town of Andover to J&J Ball Realty Trust, 47 Spring Grove Road, Andover, Massachusetts dated January 13, 2017, Revised January 14, 2019" prepared by Merrimack Engineering Services (on file at the Clerk's Office) which is part of the Spring Grove Cemetery to the care, custody and control of the Selectmen for the purposes of conveying said parcel to J&J Realty Trust and to authorize the Selectmen to convey said parcel to J&J Realty Trust in consideration of the sum of at leaset \$7,800; and to petition the Legislature to pass a Special Act in accordance with Mass. General Laws, ch. 114, §17, because the cemetery has been used as a burial place for more than one hundred years, and any other applicable law to authorize the above transfer, provided that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition, or take any action related thereto.

On request of Mark Johnson and others

ARTICLE P58	AMEND ANDOVER ZONING BYLAW ARTICLE XIII
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To see if the Town will amend Article XIII, Section 2.3, District Boundaries, of the Andover Zoning Bylaw and make the appropriate changes to the Zoning Map of Andover, Massachusetts, to rezone the following property from IA to SRC

The land known as 1320 South Street and 1322 South Street and 1323 South Street shown shown as Assessor Parcels 185-1, 184-3 and 184-3A, which plans are on file with Town Clerk and which is described as follows:

Beginning at the southeasterly corner of assessor's parcel 185-1 at the intersection of the westerly sideline of Interstate Route 93 and the Andover — Tewksbury town line; thence

Running in a northwesterly direction along the town line a distance of approximately 3,500' to a point in the centerline of the Shawsheen River, thence

Running in a generally northeasterly direction by the centerline of the Shawsheen River in a distance of approximately 1,100' to a point at the northerly corner of assessor's parcel 184-3A; thence

Running southeasterly by the northeasterly line of parcel 184-3A a distance of approximately 293' to a point in the centerline of the Shawsheen River, thence

Running in a southeasterly direction by the Shawsheen river a distance of approximately 195' to a point on the northeasterly line of assessor's parcel 184-3A; thence

Running in a southeasterly direction by the northeasterly line assessor's parcel 184-3A a distance of approximately 887' to a point; thence

Running southwesterly by the southeasterly line of assessor's parcel 184-3A a distance of approximately 250' to a point at the northerly corner of assessor's parcel 185-1; thence

Running southeasterly by the northeasterly line of assessor's parcel 185-1 a distance of approximately 1,350' to a point on the westerly sideline of Interstate Route 93; thence

Running southerly by Interstate Route 93 a distance of approximately 469' to the point of beginning or to take any action related thereto.

On request of Eliates Mercedat and others

ARTICLE P59	ELECTRONIC VOTING
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To see if the Town will vote to amend Article II of the General Bylaws by adding the following as Section 5.2:

“Electronic Voting. Subject to the availability of a system to enable electronic voting by using wireless handheld mobile devices, the Moderator may count the vote on any matter before the Town Meeting by the use of such system.” and further, that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Andover Code of Bylaws, or take any other action related thereto.

On request of Brian Major and others

ARTICLE P60	RENTAL OF ELECTRONIC VOTING SYSTEM
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To see if the Town will raise by taxation or transfer from available funds or any combination thereof and appropriate \$25,000 to pay for the rental of an electronic voting system for the use at Annual and Special Town Meetings for fiscal year 2020, or take any other action related thereto.

On request of Brian Major and others

ARTICLE P61	DASCOMB ROAD SIDEWALKS PLACEHOLDER
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To see if the town will vote to raise by taxation, borrowing, or transfer from available funds or by any combination thereof and appropriate the sum of \$800,000 for the purpose of constructing a sidewalk on Dascomb Road between Clark Road and Andover Street, including any other costs incidental and related thereto, or to take any other action related thereto.

On request of Kelly Michaud and others

ARTICLE P62	AMEND ANDOVER ZONING BYLAW ARTICLE XII
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To see if the Town will amend Article XII §51 of the Town By-Laws for Polystyrene - Food, Beverage Ware, & Packaging Reduction as listed below; and to see if the Town will vote to appropriate and raise by taxation or available funds the amount of \$2,500 to provide education and outreach on this amended By-Law to the affected establishments before its new effective date:

- Delete entire first paragraph prior to Subsections 1-6

- In Subsection 1: delete "through the use of reusable, recyclable, biodegradable and/or compostable materials" at end of the 10th point; and delete "and require the use and distribution of biodegradable, compostable, reusable, or recyclable products or materials in their place" at the end of the 12th point.
- In Subsection 2: delete definitions for "ASTM Standard", "Biodegradable", "Compostable", "Recyclable", and "Reusable".
- In Subsection 3: delete "and distribution" in first line; delete existing subparagraph b. and replace with "b. All food establishments using any disposable food service ware are prohibited from using any such ware containing Polystyrene"
- In Subsection 4: delete "person" and replace with "food or retail establishment" in the first sentence; delete "six" and replace with "twelve" in the second sentence; delete in their entirety the third and fourth sentences; add subparagraph c "c. Any disposable food service ware in inventory prior to the effective date in Subsection 6 (b) shall be exempt from this bylaw"
- In Subsection 6: delete "January 1, 2019" and replace with "May 1, 2020" in subparagraph b.

On request of Keith Saxon and others

ARTICLE P63	PLANNING BOARD TERM
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To see if the Town will vote to amend Article III, §3(b)(1) of the Town By-Laws by striking the phrase "terms of five years" and replacing it with "terms of three years" and to apply the foregoing amendment to (a) new Planning Board candidates and (b) incumbent Planning Board candidates at the expiration of their terms.

On request of Brad Weeden and others

ARTICLE P64	WATER COMMISSION
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To see if the Town will vote to accept the provisions of Section 39A of Chapter 40 of Massachusetts General Laws to elect a Board of Water Commissioners in accordance with Section 69A of Chapter 41 of the Massachusetts General Laws at the next local election and cease having its Board of Selectmen act as such upon election of said Commissioners.

On request of Jose Albuquerque and others

ARTICLE P65	REPRESENTATIVE TOWN MEETING
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To see if the Town will vote to have the Town Moderator appoint a special Governance Committee of nine residents, one from each precinct, to make a study and investigation of ways and means of establishing a Representative Town Meeting for the Town of Andover as the legislative branch of Town Government. Said Committee shall report its findings and recommendations to the Town at the 2020 Annual Town Meeting, or sooner.

On request of Jose Albuquerque and others

ARTICLE P66	FREE CASH
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To see if the Town will transfer from Free Cash a sum of money, in the amount of 20% of the most recent certified Free Cash balance or if not Spring 2018 to reduce the tax rate for Fiscal Year 2019, from available funds, a sum of money to reduce the tax rate for FY19, or take any action in relation thereto.

On request of Jose Albuquerque and others

And you are directed to serve this Warrant by posting attested copies and publication thereof, fourteen days, at least, before the time and place of said meeting as directed by the Bylaws of the Town.

Hereof fail not, and make return of this Warrant with your doings thereon, at the time and place of said meeting.

Given our hands this 11th day of March 2019.

_____)	
Alexander J. Vispoli, Chair)	
)	
_____)	
Laura M. Gregory, Vice Chair)	SELECTMEN
)	
_____)	OF
Christian C. Huntress, Selectman)	
)	ANDOVER
_____)	
Ann W. Gilbert, Selectwoman)	
)	
_____)	
Paul J. Salafia, Selectman)	

A true copy

A T T E S T

Ronald Bertheim, Constable

Andover, Massachusetts, _____, 2019

Pursuant to the foregoing Warrant, I, the subscriber, one of the Constables of the Town of Andover, have notified the Inhabitants of said Town to meet at the time and place and for the

purposes stated in said Warrant, by posting a true and attested copy of the same on the Town Hall, on each school house, and in no less than five other public places where bills and notices are usually posted and by publication in the *Eagle Tribune*. Said warrants have been posted and published fourteen days.

Ronald Bertheim, Constable

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ATTORNEYS AT LAW

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Robert W. Lavoie (MA, NH)
Lorri S. Gill (MA)

Paralegals
Karen L. Bussell
Danielle R. Corey
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

Via Certified Mail
RRR #7017 2400 0001 0379 6915

February 4, 2019

Alexander J. Vispoli, Chair
Andover Board of Selectmen
Town of Andover
36 Bartlet Street
Andover, MA 01810

Re: Appeal of Conservation Commission selection of consultants
Mass.Gen.Laws ch.44, §53G
Andover Conservation Commission Rule and Regulation Adopted May 2, 2006

Dear Chairperson Vispoli and Members of the Board of Selectmen:

I represent D. Mark D'Annolfo and Phillip D'Annolfo, owners of land located off of Rocky Hill Road. The D'Annolfo's property includes all of the Frederick Drive Subdivision, excluding the portion previously acquired by the Town. As you may recall, the Inhabitants of the Town of Andover hold title to the balance of the land in the Frederick Drive Subdivision located at the end of the (unconstructed) cul de sac roadway.

This letter is my clients' appeal, pursuant to Mass.Gen.Laws, ch. 44, §53G and Conservation Commission Rule and Regulation dated May 2, 2006, of the Conservation Commission's selection of consultants in connection with my clients' proposed modification of the Frederick Drive Subdivision project. A copy of the Commission's May 2, 2006 Rule and Regulation is attached hereto for your reference. My clients have already paid in excess of \$30,000 to consultants selected by the Conservation Commission in connection with the Commission's most recent prior review of their proposed modification. In connection with an upcoming proceeding before the Commission, concerning certain additional changes to the project, the Commission has recently selected three, so-called "peer review" consultants. Those three consultants have

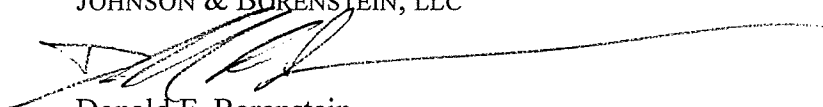
Alexander J. Vispoli, Chair
Andover Board of Selectmen
February 4, 2019
Page 2

proposed an initial, combined budget of an additional amount of \$18,000. My clients' appeal the Commission's selection of these consultants is based on potential conflicts of interest and on their qualifications. A copy of the consultant's proposals are attached for your reference.

It is requested that this matter be placed on the meeting agenda of February 25, 2019, for the Board's consideration. I will expect to attend with my client.

Thank you for your cooperation in this regard.

Very truly yours,
JOHNSON & BORENSTEIN, LLC



Donald F. Borenstein

DFB/mf
Enclosure

Cc: Andover Conservation Commission, c/o Robert Douglas
Thomas J. Urbelis, Esq.
Andover Consultants, Inc.
D. Mark D'Annolfo
Phillip D'Annolfo

RULE AND REGULATION

In accordance with Massachusetts General Laws Chapter 44, §53G, the Commission may require that applicants provide funds to the Commission for the reasonable fees of consultants to be selected by the Commission. Such fees shall be deposited into a special account for the review of petitions or applications required by state or federal law or local by-law filed with the Commission for review or approval and the inspection of work performed thereunder. An applicant may appeal the selection of the consultant to the Board of Selectmen within 7 days of such selection. Such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or related fields. The required time limits for action upon an application or petition by the Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of such appeal, the selection made by the Conservation Commission shall stand. Such administrative appeal shall not preclude further judicial review, if otherwise permitted by law. Any such account shall be established by the town treasurer and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the Conservation Commission without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or the applicant's successor in interest.

The town accountant shall submit annually a report of said special account to the Board of Selectmen and Town Manager to review. Such report shall be published in the town annual report. The town accountant shall submit annually a copy of said report to the director of the bureau of accounts.



January 30, 2019

Email (rdouglas@andoverma.gov)

Robert Douglas, Conservation Director
Andover Conservation Commission
Town Offices
36 Bartlet Street
Andover, MA 01810

Re: Revised Site Plan/Remand Review
Assessor's Map 63, Lots 9, 9F
Frederick Drive
Andover, Massachusetts

[LEC File #: TOA14-429.02]

Dear Mr. Douglas:

In response to your request, LEC Environmental Consultants, Inc. (LEC) has prepared the following scope of services and estimated fees relative to the Commission's review of the September 12, 2018 Subdivision Modification Plan and Stormwater Management Report submitted to DEP for review and issuance of a Superseding Order of Conditions (SOC) under the *Massachusetts Wetlands Protection Act* (M.G.L. c. 131, s. 40, the *Act*), the January 16, 2019 Superior Court remand under the *Town of Andover General By-Law for Wetland Protection* (Article XIV, the *Bylaw*), and the January 3, 2019 Alternative Analysis Sketch-Shift Road North Plan submitted to MEPA on January 9, 2019 as Supplemental Information under the Environmental Notification Form Review.

Due to the unpredictable nature of the peer review process, it is difficult to determine the full extent of involvement necessary by LEC to complete our peer review. However, we have prepared the following scope of services in hopes that this will be sufficient to complete the review process such that the project complies with the applicable statutes, regulations, guidance documents, and program policies. This proposal includes a Scope of Services, Additional Services, and Fee for Services. Fees for Services will be invoiced on a time and materials basis according to the attached Terms and Conditions and Standard Fee Schedule.

1 Scope of Services

The following tasks are to be performed under this Agreement:

- 1.1 LEC attended the Commission's Executive Session Meeting on November 16, 2018 regarding the premature issuance of a DEP Superseding Order of Conditions based on the September 12, 2018 Subdivision Modification Plan and Stormwater Management Report, reviewed the premature SOC, conducted a cursory review of the September 12, 2018 Subdivision Modification Plan, coordinated with Conservation Staff and DC MacRitchie regarding the revised stormwater design and regulatory compliance, and provided an initial Peer Review Response dated December 4, 2018.

LEC Environmental Consultants, Inc.

www.lecenvironmental.com

10 Pleasant Road
Suite 1
Plymouth, MA 02360
508-240-9491
508-240-0452 (Fax)
PLYMOUTH, MA

380 Lowell Street
Suite 101
Worcester, MA 01606
781-338-0006
781-240-0077 (Fax)
WORCESTER, MA

107 Grove Street
Suite 402
Worcester, MA 01605
508-752-8077
508-752-3177 (Fax)
WORCESTER, MA

P.O. Box 880
Andover, MA 01810
408-880-8728
508-880-8729 (Fax)
ANDOVER, MA



- 1.2 LEC attended a MEPA Site Visit on January 25, 2018, reviewed the January 3, 2019 supplemental Alternative Analysis Sketch-Shift Road North Plan, coordinated with Conservation Staff and DC MacRitchie regarding the supplemental Alternative Plan, and reviewed Commission comment letters and Applicant responses to MEPA relative to discussion during the MEPA Site Visit and subsequent correspondence.

- 1.3 LEC will peer review and discuss with DC MacRitchie, Milone & MacBroom, and Conservation Staff, as may be necessary, the September 12, 2018 Subdivision Modification Plan and Stormwater Report and the supplemental Alternative Plan submitted to MEPA.

In order to facilitate a timely and productive review, LEC recommends scheduling a Working Session amongst Andover Conservation Staff, LEC Staff, DC MacRitchie Staff, Milone & MacBroom Staff, and the Applicant's representatives to discuss site hydrology, catchment areas, groundwater elevations, groundwater mounding, the stormwater design, retaining walls, design of the wetland replication area, etc. to provide guidance to the Applicant's representatives on the concerns expressed in the December 31, 2018 DC MacRitchie Peer Review Letter, the January 22, 2019 Milone & MacBroom Peer Review Letter, and comments and concerns from LEC once we review the Modified Wetland Replication. The intent of this meeting is to openly discuss the project design and concerns relative to compliance with DEP Stormwater Management Standards and the DEP Inland Wetland Replication Guidance. LEC recommends this working session because it proved exceedingly helpful during prior iterations of peer review on this project.

- 1.4 LEC will review one (1) round of revised plans/materials in response to the aforementioned Working Session. If the Applicant rejects our recommendation for a Working Session, LEC will prepare written comments on the September 12, 2018 Subdivision Modification Plan and supplemental Alternative Plan and then review one (1) round of revised plans/materials in response to our written comments.
- 1.5 LEC will prepare and submit one (1) Final Summary Review Memorandum to the Andover Conservation Commission (ACC) and copied to the Applicant's representatives documenting our peer review comments and recommendations.
- 1.6 LEC will attend two (2) Public Hearings to present our peer review findings to the ACC and answer any questions that may arise.
- 1.7 LEC will provide consultation and guidance to you and the ACC and assist in preparing the Order of Conditions (OOC) and Finding Statements relative to compliance with the Stormwater Management Standards, Wetland Replication, Wetlands Protection, the Project Design, and mitigation offered to offset impacts to Isolated Wetlands, the 25-foot No Disturb Zone, and the Buffer Zone.
- 1.8 LEC will attend one (1) Public Hearing to review and discuss the OOC and Findings with the Commission and answer any questions that may arise.



2 Additional Services

The following is a list of services that are specifically excluded from this Agreement, but can be provided upon receipt of your authorization to proceed in accordance with the attached Standard Fee Schedule.

- 2.1 LEC will attend additional Working Sessions, Peer Review Conferences or Public Hearings beyond those enumerated above.
- 2.2 LEC will review additional supplemental information or revised plans beyond that enumerated above.
- 2.3 LEC will prepare additional written memorandum/reports beyond those enumerated above.

If requested by the ACC, a proposed scope of work will be prepared and submitted in advance for approval. The estimated fee to perform any requested supplemental task will be in accordance with the Standard Fee Schedule.

3 Fees for Services

LEC has prepared an estimated budget of Nine Thousand, Five Hundred Dollars (\$9,500.00) for services described in Articles 1.1 through 1.8, inclusive of direct expenses as described in the Scope of Services of this Agreement. LEC proposes to provide these services on a time and materials basis according to the attached Terms and Conditions and Standard Fee Schedule. This budget is not a "not-to-exceed" amount. LEC shall inform the Commission should it become necessary to exceed the estimated budget in order to perform all proposed and/or additional services required. This is an estimate of fees. Therefore, any unused funds will be returned to the Applicant. This proposal is valid until February 28, 2019.

Sincerely,

LEC Environmental Consultants, Inc.

A handwritten signature in dark ink, appearing to read "Ann M. Marton", is written over a horizontal line.

Ann M. Marton, President
Director of Ecological Services

proposals\14-429 TOA NOI Remed Review

Terms and Conditions

This document, together with any attached proposals, plans, specifications or appendices, constitutes an Agreement between the Client and/or other involved parties and LEC Environmental Consultants, Inc. (hereafter referred to as LEC).

Below are the terms and conditions under which LEC will perform the attached Scope of Services. These terms and conditions also outline billing procedures and policies that apply to the Agreement for the duration of the Agreement with LEC.

1 Services to be Provided

- 1.1 LEC agrees to provide the Client with the services described in the attached Proposal in a responsible, professional manner.
- 1.2 Additional services may be requested by the Client and/or other involved parties and shall be invoiced in accordance with the attached Standard Fee Schedule.

2 Fees

- 2.1 Fees are re-evaluated on a semiannual basis. In the event of an increase, the Client will be notified 30 days in advance. Time is billed on a portal-to-portal basis.
- 2.2 The Client agrees to pay LEC in accordance with the rates and charges set forth in the attached Standard Fee Schedule.
- 2.3 If the services are discontinued for any reason after the execution of the Agreement, all services performed to date shall be compensated at the rates set forth in the attached Proposal and/or Standard Fee Schedule.

3 Payment

- 3.1 The mailing address for all payments is as follows: LEC Environmental Consultants, Inc. Attn: Accounts Receivable/Billing Dept., 380 Lowell Street, Suite 101, Wakefield, MA 01880.
- 3.2 Invoices for services shall be submitted on a monthly basis and/or upon the completion of services to be determined at the discretion of LEC. All such invoices shall be due and payable within 30 days of receipt.
- 3.3 LEC reserves the right to terminate or suspend its services at any time if our fees or charges set forth in the Proposal and/or these Terms and Conditions remain unpaid and we are not able to resolve a satisfactory arrangement for such payment.

4 General Conditions

- 4.1 All services will be performed in a timely manner. It is agreed between all parties that LEC cannot be responsible for delays occasioned by factors beyond its control, nor by factors which could not have been foreseen at the time the agreement was prepared and executed.
- 4.2 All documents prepared pursuant to this Agreement are instruments of service with respect to this project. They are not intended or represented to be suitable for reuse by the Client and/or other involved parties or on any other Project.

5 Right of Entry

The Client hereby warrants, if the property is not owned by the Client, that permission has been granted for a Right of Entry by LEC, its agents, and staff for the purpose of performing all services described in the attached Proposal. LEC reserves the right to request written right-of-entry authorization prior to the commencement of services.

6 Unforeseen Conditions

If, during performance of services, any unforeseen conditions or occurrences beyond our control are encountered which, in LEC's judgment, significantly affect or may affect the services of the recommended Scope of Services, the Client will be promptly notified. Subsequent to the notification, the involved parties agree to pursue one of the following options:

- 6.1 If practical, in LEC's judgment, the original Scope of Services will be completed in accordance with the procedures originally intended in the Proposal for Professional Services.
- 6.2 The Scope of Services will be modified, and the estimate of charges revised, to include unforeseen conditions or occurrences. Such revision shall be in writing and signed by the parties herein.
- 6.3 The services will be terminated, effective on the date specified by LEC in writing. The Client agrees to pay in full for all services completed and fees up to and including the date specified in the written termination.

7 Severability

In the event that any provisions of this agreement shall be deemed invalid or unenforceable, the other provisions herein shall remain in full force and effect and binding upon all parties.

LEC Environmental Consultants, Inc.

Standard Fee Schedule

Consulting and Field Services:	Hourly Rate:
Directors	\$125.00 – \$200.00
Senior Coastal Geologist	\$125.00 – \$175.00
Senior Soil Scientist	\$150.00 – \$175.00
Senior Ecologist/Marine Biologist	\$100.00 – \$150.00
Ecologist/Marine Biologist	\$ 85.00 – \$100.00
SCUBA Diver	\$150.00
Senior Wildlife Scientist	\$125.00 – \$175.00
Wildlife Scientist	\$ 85.00 – \$125.00
Wildlife Specialist	\$ 50.00 – \$ 75.00
Senior Wetland/Environmental Scientist	\$125.00 – \$175.00
Wetland/Environmental Scientist	\$ 85.00 – \$125.00
Wetland/Environmental Specialist	\$ 50.00 – \$ 75.00
Permitting Technician	\$ 40.00 – \$ 55.00
AutoCAD Technician	\$ 50.00 – \$ 85.00
Expert Testimony:	
Executive Director	\$350.00
Assistant Director/Director	\$300.00
Senior Coastal Geologist/Soil Scientist	\$300.00
Wildlife/Wetland/Environmental Scientist	\$250.00
Ecologist/Marine Biologist	\$225.00
Wetland/Wildlife/Environmental Specialist	\$200.00

Reimbursable expenses include, but are not limited to: facsimile transmission, printing and binding, photocopying, delivery charges, postage, expendable project related supplies, research materials, transportation, meals and lodging.

Effective: 01/2015



DC MacRitchie, LLC

7 Hillside Avenue

Exeter, NH 03833

(603) 845-3572 • (978) 801-0667

DCMacRitchie.com

January 28, 2019

Mr. Robert Douglas, Conservation Director
Conservation Division
Town of Andover
36 Bartlett St.
Andover, MA 01810

Send via: email & USPS

Subject: Proposal for Additional Professional Services – Peer Review (DCM Ref No. 34223-104)
Reference: NOI, Frederick Drive Subdivision

Dear Mr. Douglas:

This proposal is for additional services related to the above-referenced project. The following services are proposed:

- 1) Conduct an initial peer review of revised documents dated September 12, 2018 for compliance with the standards defined in the original agreement (completed).
- 2) Complete a peer review of the September 12, 2018 documents or more recently revised documents as applicable.
- 3) Prepare for and attend one conservation commission hearing.

The additional proposed services will be invoiced for the actual cost, time and materials expended in accordance with the attached rate schedule. The estimated cost to complete these services shall not exceed \$5,000.00 without prior authorization. All other terms and conditions in the original agreement executed in June of 2016 remain in effect.

You may accept this proposal by signing on the signature line below and returning one copy to this office.

Thank you for allowing me the opportunity to provide you with this proposal. Please feel free to contact me at (603) 845-3572 or dan@dcmacritchie.com if you have questions or require any additional information.

Sincerely,
D.C. MacRitchie, LLC



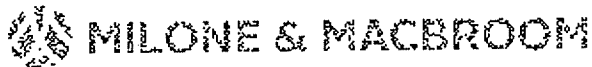
Daniel C. MacRitchie, P.E.
President

This Proposal is accepted as evidenced by the execution hereof.

Authorized Client Signature:

Date:

Printed Name:



December 4, 2018

Ms. Lynn Viselli
Conservation Administrative Secretary
36 Bartlet Street
Andover, MA 01810

**RE: Agreement for Peer Review Services
Retaining Wall Review
Frederick Drive
Andover, Massachusetts
MMI #6501-03-0**

Dear Ms. Viselli:

Milone & MacBroom, Inc. (MMI) is pleased to submit this proposal to provide technical peer review of plans and supporting documentation relative to the structural design of the proposed retaining wall associated with the subdivision modification plan at Frederick Drive in Andover, Massachusetts. It is our understanding that the commission will hear this application in the near term, and we will prepare and submit a comment letter on application materials received for the project at a minimum 48 hours prior to the date of the public hearing.

SCOPE OF SERVICES

Task 1.0 – Technical Peer Review

- 1.1 Obtain a copy of relevant materials included in the Notice of Intent application package such as drawings, structural wall details, geotechnical engineering data, and other relevant documentation as prepared by the applicant for our structural review.
- 1.2 Review the application package, project plans, and other documentation submitted by the applicant and provide the commission comments and/or questions relative to our structural review. Review comments will be limited to engineering design elements for the proposed retaining wall.
- 1.3 Attend a meeting with the commission and/or town staff. For budgetary purposes, attendance at one meeting is included.
- 1.4 Review revisions to the application or supporting materials as may be provided by the applicant and provide written feedback within a reasonable time frame.

PROFESSIONAL FEES

The above services will be performed on an hourly basis at our preferred rates (copy attached) plus direct nonsalary expenses. The total fee will not exceed \$3,500 without prior authorization from the town. Reimbursable expenses, including mileage, postage, and reproduction will be billed as direct expenses in addition to the project fee.

STANDARD TERMS AND CONDITIONS

Work will be performed in accordance with MMI's Standard Terms and Conditions (copy attached), incorporated by reference.

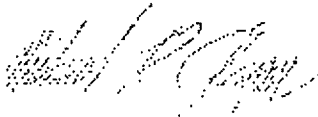
ACCEPTANCE

The original and one copy of this proposal are enclosed. If it satisfactorily sets forth your understanding of the arrangement between us, we would appreciate your signing one copy in the space provided and returning it to us for our files.

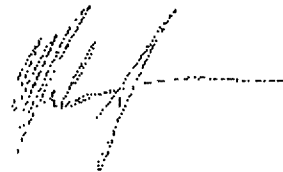
We look forward to a pleasant and rewarding association with you on this project.

Very truly yours,

MILONE & MACBROOM, INC.



Michael R. Gagnon, PE
Senior Project Specialist, Civil Engineering



Mark Arigoni, PLA, Vice President
Massachusetts Regional Manager

Enclosures

6561-03-0 (1318-prop.doc)

The above proposal and attached Standard Terms and Conditions are understood and accepted:

By: _____ Date: _____

(Print name and title)

STANDARD TERMS AND CONDITIONS

Unless specifically excluded in the Contract, these Terms and Conditions are incorporated by reference into the foregoing proposal or contract and shall be part of the Agreement under which Services are to be performed by Milone & Macaroni, Inc. (MMI) for the Client.

- 1. Timing of Payment:** Monthly, MMI will invoice Client for all Services rendered during the previous month. Invoices will be due upon receipt. Any unpaid invoices and charges will draw into payment fees at 1 1/2% per month commencing 30 days after date of invoice. Client shall notify MMI in writing of any disputed amount within 10 days after date of invoice; otherwise, Client shall be deemed to have waived any objection to all invoice charges and agreed to the invoice being acceptable. Payment thereafter shall be applied to the next amount and then to the principal unpaid amount. Lump sum fee Fixed Price contracts will be invoiced on a percent-complete basis as determined by MMI. Unless otherwise agreed, out-of-pocket costs for mileage, special mailing, reprographics, and similar costs will be invoiced as additional direct expenses. Subcontractor fees will be invoiced at cost plus a 10 percent markup for processing. In the event that MMI retains a collection agency or attorneys to recover any monies owed by Client to MMI, then MMI shall also be entitled to recover its reasonable cost of collection and legal costs from Client, including, but not limited to, all fees and costs incurred by MMI under mediation and litigation proceedings. MMI may suspend or terminate any and all of the Services if payment of any invoices amount not reasonably in dispute is not received by MMI within 60 days from the date of MMI's invoice. Such suspension of services is done without making any other claim against Client and without incurring any liability to Client for such suspension due to Client's breach of payment terms. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination.

The Client's obligation to pay for the Services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, favorable judgment of lawsuit, or upon Client's successful completion of project. Should Services be suspended for a period of ninety (90) days, MMI shall be entitled to additional compensation for non-site work, lump sum fee if applicable, quoted in this Contract shall remain valid for a period of twelve (12) months from the date of Contract. Thereafter, they may be adjusted in accordance with MMI's current rate structure. Hourly personnel rates may be adjusted on an annual basis.

- 2. Level of Service:** The level of Service will be performed for the exclusive benefit of Client. MMI will perform the Services using that degree of skill and care ordinarily exercised under similar conditions by reputable members of MMI's profession practicing in the same or similar locality at the time of performance. No other warranty, express or implied, is made or intended, and the same are hereby disclaimed.

Client shall not be entitled to assert a claim against MMI based on any theory of professional negligence or violation of the standard of care unless and until Client has obtained the written opinion from a licensed, independent, and reputable engineering and/or environmental professional as appropriate for the Services in question, that MMI has violated the standard of care applicable to MMI's performance of those Services under this Contract. Client shall promptly provide such independent opinion to MMI, and the parties shall endeavor in good faith to resolve the claim within 30 days.

- 3. Deliverables:** All hard paper copies of deliverables, including and limited to, any and all reports, drawings, plans, and specifications prepared by MMI hereunder shall be delivered to Client upon final payment for MMI's Services. Deliverables may not be used or reused by Client, its employees, agents, or subcontractors in any iteration of the project or on any other project or any other use without the prior written consent of MMI. Client agrees that all deliverables furnished to the Client not paid for in full will be returned to MMI upon demand and will not be used for design, construction, permits, or licensing. All originals of such deliverables shall remain in possession of and the property of MMI. Copies of any electronic media or disks or originals of any of MMI's deliverables, such as design, specifications, calculations, CAD documents, etc., shall not be made available unless a specific agreement is made to the contrary as part of the Scope of Services. All the drawings, plans, specifications, and deliverables prepared by MMI are instruments of MMI's service, and MMI shall be deemed the author of them as it will retain all intellectual, statutory, and other reserved rights including, but not limited to, the copyrights.

MMI shall have the right to include photographs or other representations of the project among MMI's promotional and professional materials. MMI shall be given reasonable access to the Project to make such representations. Client shall provide MMI all confidential or proprietary information which should be excluded from promotional materials.

- 4. Limitation of Liability:** In recognition of the relative risks and benefits of the Project to both the Client and MMI, the Client agrees that except to the extent caused by the willful misconduct of MMI, all claims for damages asserted against MMI by Client, including claims against MMI's directors, officers, shareholders, employees, and agents, are limited to the extent to be proved pursuant to 33B(C)(2), which is less than \$100,000. MMI is not responsible for its personnel only, and no others. MMI shall not be responsible for any special, incidental, indirect, or consequential damages (including lost profits) suffered by

MILONE & MACARONI

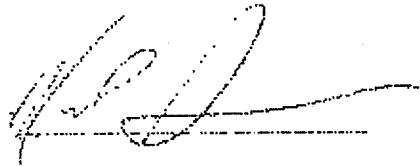
MMI - 01/21/10
1/21/10

Client is a result of MMJ's performance or nonperformance of Services. MMJ shall not be liable for extra work or other consequences due to changed conditions or for costs related to failure of the contractor, contractor or masterpieces or service provider to install work in accordance with the plans, specifications, or applicable code, or for the actions or inactions of regulatory agencies. Any claim shall be deemed waived unless made by Client in writing and received by MMJ within one (1) year after completion or termination of the Services.

5. **Client Acknowledgment:** Client shall indemnify and hold harmless MMT and its shareholders, directors, officers, employees, and agents against all claims and potential liabilities (including costs of defense, settlement, and reasonable attorney's fees) which may result from any negligent, intentional, or reckless conduct of MMT or any person, including any employee, agent, or representative of Client, MMT's employees, agents, and subcontractors, and Client's branch of contact.
6. **Assured Minimum Security:** Client shall provide total of information which is known or readily accessible to Client which may be reasonable and/or necessary for completion of the Services by MMT or protection of safety of MMT personnel.
7. **Force Majeure:** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Contract, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts and other industrial disturbances, unknown or contagious diseases, sabotage, fire, loss of or failure to obtain permits, unavailability of labor, materials, fuel or services, court orders, acts of God and acts, orders, laws, or regulations of the Government of the United States or the Federal States, or any foreign country, or any governmental agency. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the Services may be continued.
8. **Termination:** This Contract may be terminated by either party upon thirty (30) days written notice to the other party. Irrespective of which party terminates or the cause therefor, Client shall, within thirty (30) days of termination, compensate MMT for fees, charges for services, and costs incurred up to the time of termination, as well as those associated with termination activities. It is agreed, at any time after the total compensation payable to MMT under this Contract is met, that MMT shall have the right to suspend or terminate further performance or completion of Services until Client and MMT have executed an extension to this contract, in a new contract.
9. **Entire Contract:** This Contract constitutes the entire agreement, including herein-referenced proposals, attachments, and schedules, etc., between the parties and supersedes any and all prior written or oral agreements, negotiations, or understandings existing between the parties. This Contract may be amended only by written instrument signed by each party.
10. **Testimony:** Should MMT or any MMT employee be requested by any party or compelled by law to provide nonexpert testimony or other evidence with respect to the Services, and MMT is not a party to the dispute, MMT shall be compensated by Client for MMT's expenditures, therefore retained, document production, and testimony at MMT's current hourly rates MMT shall provide expert witness testimony providing to any Services at premium rates of 1.5 times the then current hourly rates. Client agrees to reimburse MMT for reasonably travel, lodging, and meal expenses that are incurred in conjunction with providing either expert or nonexpert testimony or other evidence.
11. **Precedence and Survival:** This Contract shall take precedence over any inconsistent or contradictory provisions contained in any Client issued purchase order, requisition, notice to proceed, or the document regarding the Services. All obligations arising prior to the termination of this Contract and all provisions of this Contract allocating responsibility or liability between Client and MMT that survive the termination of Services hereunder and the termination of this Contract.
12. **Governing Law:** This Contract shall be governed by, controlled, and interpreted in accordance with the laws of the Commonwealth of Massachusetts, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
13. **Claims, Disputes/Arbitration:** For any claim, dispute, or other matter in question between parties to this Contract arising out of or relating to this Contract or herein stated, the parties shall first attempt to resolve such issues through discussions between MMT and Client. Any claim or dispute unresolved after the above discussions shall be subject to and decided by and through the process of binding arbitration, and mediation process shall be done by and through an independent court-certified mediator (arbitration proceedings, binding, one-on-one, non-binding, non-binding, non-binding, non-binding). Any unsettled claim, dispute, or other matter in question between parties not settled and agreed to by the parties or mediator shall be subject to and decided by and through litigation.

Certification of Good Faith

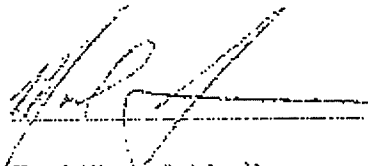
The undersigned certifies under penalties of perjury that his contract has been obtained in good faith without collusion or fraud with any other person. As used in this certification, the word "person" shall any natural person, business partnership, corporation, union, committee, club, or other organization, entity or group of individuals.



For Milone & MacBroom

Statement of State Tax Compliance

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I, ADRIAN ARIZONI, J.P. authorized signatory for Milone & MacBroom whose principal place of business is One Financial Plaza, 1350 Main Street, Suite 1012, Springfield, Massachusetts, 01103, do hereby certify under the plans and penalties of perjury that MILONE & MACBROOM, INC. has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



For Milone & MacBroom

Federal Identification Number of Milone & MacBroom

06-1117358

Contract Accepted By:

Andrew Flanagan, Town Manager

Date

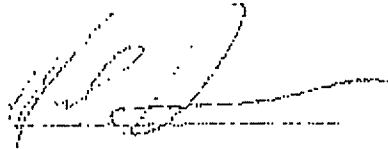
Approved As to Form Only:

Thomas J. Urbelis, Esquire
Town Counsel

Date

Certification of Good Faith

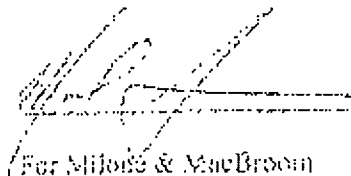
The undersigned certifies under penalties of perjury that his contract has been obtained in good faith without collusion or fraud with any other person. As used in this certification, the word "person" shall any natural person, business partnership, corporation, union, committee, club, or other organization, entity or group of individuals.



For Milone & MacBroom

Statement of State Tax Compliance

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, I, Michael Milone, LLC, authorized signatory for Milone & MacBroom whose principal place of business is One Financial Plaza, 1350 Main Street, Suite 1012, Springfield, Massachusetts, 01103, do hereby certify under the pains and penalties of perjury that Milone & MacBroom, LLC has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

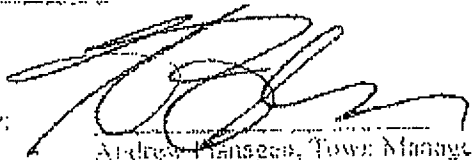


For Milone & MacBroom

Federal Identification Number of Milone & MacBroom

06-111355

Contract Accepted By:



Andrea Mangano, Town Manager


Date

4/8/19

Approved As to Form Only:

As Amended

12-14-18


Thomas J. Arbelis, Esquire
Town Counsel

12/17/2018
Date

To: Andrew Flanagan, Town Manager; Board of Selectman and Conservation Commission

From: Robert Douglas, Director of Conservation

Date: February 12, 2019

Re: Frederick Drive Appeal

I just wanted to send you a quick note about Don Borenstein's Appeal of the Andover Conservation Commission's selection of consultants related to a Notice of Intent filing on Frederick Drive. The appeal document is attached.

It is important to know that the proposed Frederick Drive subdivision will not be constructed at the edge or buffer of a wetland, but portions of it will actually fill and destroy an existing jurisdictional wetland. Additionally, the plan reflects the proponent's apparent desire to maximize the number of house lots and reduce the size of the stormwater treatment areas to a size that is less than needed to make them fit into the remaining area of the site. The filling of a wetland resource area in Andover of this scale is fairly rare. (In recent memory the widening of the State roadway at Dascomb Road and the construction of the Bancroft School are the only examples which come to mind). Furthermore, the site is problematic. Soils on the property do not drain well, some of which contain fill.

The project as proposed and submitted did not have the information the Commission needed to make a decision. Our peer reviewer was constantly in the position of having to react to new plans as the owner changed the design, and even the revised plans did not contain all of the needed information. The constant revisions of the plan have taken up a large amount of the Conservation Commission's time, and that of our peer review consultants. Each time we receive a new plan - every individual sheet and calculation must be scrutinized - as the changes are often not clearly expressed. Each time a new plan set is reviewed, the peer review consultants need to carefully document these changes in a new report and provide their findings to the Conservation Commission in an open session meeting. The Commission takes its job seriously and is interested in assuring that the environment is protected as well as the residents that live in the subdivision long after the site developers have left the scene.

While there are many quite unusual incidents related to this filing, I'll refer to the most relevant at the moment. In the fall the Conservation Commission issued a denial for the project and the Applicant appealed the denial to DEP. The Applicants - as part of the appeal - sent a significantly revised plan set, dated September 12, 2018 to DEP to have DEP issue a Superseding Order of Conditions. This revised plan set, was never sent to the Conservation Commission, Town Counsel or our peer review consultants for review prior to the appeal. Since DEP did not receive any comments from us about the new plans, DEP issued a Superseding Order of Conditions of project approval based on this plan set dated September 12, 2018. As soon as DEP was informed that we did not receive the new plans, DEP immediately revoked the Superseding Order.

The Applicant also appealed the denial under our local By-Law to Superior Court. Superior Court remanded the project back to the Conservation Commission for review, which includes a review of the significantly revised plan set (dated September 12, 2018) by the Conservation Commission's peer review consultants.

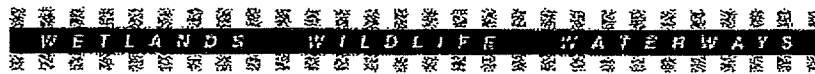
Contrary to regular procedures, this new plan has never been seen in a public setting by the Commission, nor had the 'sunshine' of a public meeting or hearing. It is critical that this review must

take place, and that the Commission can make informed decisions about it. Attorney Borenstein's appeal to the Board of Selectmen is an attempt to avoid a review of their controversial plan by refusing to pay the required fee for peer reviews.

Furthermore, these particular peer review consultants have been working on this project since December, 2014. If the proponents truly believe there is a conflict of interest and the consultants are not qualified to conduct the peer reviews, it is bewildering to me why an appeal was not filed by the Applicant's representative sooner

It must be noted that the Conservation Commission's peer review consultants are top professionals in their fields, hold professional certifications to that effect, and have served as expert witnesses in many capacities. The Commission and Staff need their input in order to make informed decisions about the project. Under the Massachusetts Wetlands Protection Act and our Town Wetlands Protection By-law, the Commission is allowed to retain peer review consultants to provide expert advice to town boards. Our consultants have no *Conflict of Interest* that I am aware of, and they are all qualified professionals.

Lastly, I feel portions of this new plan may be dangerous. Our peer review consultants are critical of the design and lack of adherence to engineering design standards in the plan. The plan includes a stormwater detention basin contained by a retaining wall that if built as planned, will hold back large quantities of water just 15 to 20-feet away from the neighbor's house. Through the findings of our engineering peer review consultant, and in conversations I have had with other engineers - including our Town Engineer – there have been some serious questions raised. Should this retaining wall fail there would be damage to the wetlands and major consequences to down gradient properties. We have specifically retained the firm Milone & MacBroom for their expertise in this matter. (This Engineering firm recently served as the advisor on the reconstruction of the large dam at Field Pond in Harold Parker State Park.) In a letter to the commission (1/22/2019) Milone & MacBroom stated that the submitted Frederick Drive plans were not adequate and concluded that, *"Essentially, we cannot proceed further with a detailed structural review until we receive more design information for the proposed retaining wall."*



Ann M. Marton
President & Director of Ecological Services

Serving as the President and Director of Ecological Services at LEC Environmental Consultants, Inc., Ann has been working in the environmental consulting field since 1987. She began her career as a Landscape Architect/Environmental Planner in Fairfield, Connecticut working on large-scale land use/land management and development projects located throughout New York and Connecticut with an emphasis on environmental permitting, protection of natural resources, and stormwater management. Moving to Massachusetts in 1994, she began working at LEC and purchased the business from the founder in 2008.

Ann is adept and experienced at guiding development teams through project design and regulatory compliance; assessing land use impacts to wetlands, wildlife, and endangered species; and effectively managing teams to meet project goals within timelines. She regularly represents a wide variety of private and public clients before federal, state, and local agencies through pre-application negotiations, environmental permit applications, and consultation regarding mitigation and regulatory compliance, wetland restoration and replication design, buffer zone mitigation, and construction supervision or monitoring.

Ann holds a B.S. degree in Landscape Architecture from Texas A&M University with graduate studies in Soil Science at the University of Massachusetts. She served on the Board of Directors for the Association of Massachusetts Wetland Scientists from 2001-2005, and is a member of the Women Presidents' Organization, Society of Wetland Scientists, and the Massachusetts Association of Conservation Commissions.

Ann has provided expert testimony for Middlesex and Norfolk Superior Courts, the DEP Adjudicatory Process, MA Appellate Tax Board, and the Massachusetts Department of Housing and Community Development Housing Appeals Committee. She also has lectured and instructed seminars on Wetlands, Rare Species, Riverfront Area, Planning and Permitting, and Erosion Controls in a variety of educational settings including for the Massachusetts Continuing Legal Education, Boston Bar Association, Rhode Island Real Estate Board, Association of Massachusetts Wetland Scientists, and Massachusetts Association of Conservation Commissions.

LEC Environmental Consultants, Inc.

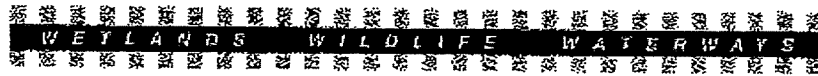
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RINDGE, NH



Thomas A. Peragallo
Senior Soil/Wetland Scientist

Tom has over 42 years of experience in soil and wetland science and has been working at LEC since 2007. Tom began his career in 1976 with the USDA Soil Conservation Service managing soil survey parties in Massachusetts that were responsible for preparing soil survey reports for publication including creating high intensity soil maps; training new soil scientists; conducting public meetings and educational seminars; and providing assistance to individuals and units of government. Tom was the principal author of the Norfolk and Suffolk Counties, MA soil survey and was the co-author of the soil survey for Middlesex County, MA. In 1988 Tom left government service to form a private consulting company providing guidance and assistance to individuals and corporations in Massachusetts and New Hampshire on soil science and related environmental issues, including soil testing, site analyses, soil mapping, wetland mapping, and technical soil reports.

Tom's field of expertise has focused on soil testing, site analyses, soil classification, soil mapping and interpretation, wetland mapping, technical soil reports, land evaluation, conservation planning, and related environmental issues primarily in Massachusetts, Maine, and New Hampshire. Project participation has ranged from evaluating human disturbed soils that are difficult to interpret to routine wetland delineations and soil mapping. As a certified soil scientist, Tom meets the specialized qualifications required to delineate wetlands and map soils in Connecticut, Maine, and New Hampshire.

Tom holds a B.S. degree in Soil Science from the University of Rhode Island with post-graduate studies in Soil Science and Engineering wetland Science from the Texas A&M University Soil Science Institute. Mr. Peragallo is the co-chair of the New England Hydric Soil Technical Committee who is responsible for updating and publishing the *Field Indicators for Identifying Hydric Soil in New England*. Mr. Peragallo also serves as Vice President of the Society of Soil Scientists of Northern New England, and is on the teaching staff of University of New Hampshire Professional Development and Training. Mr. Peragallo also serves on the New Hampshire Board of Licensure for natural scientists. He has qualified as an expert witness in MA District and Superior Courts and Massachusetts DEP Adjudicatory Hearings. He routinely functions as a third party mediator for Conservation Commissions and Boards of Health.

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603-899-6726 (Fax)
RINDGE, NH

Daniel C. MacRitchie, P.E.

7 Hillside Avenue
Exeter, New Hampshire 03833
dan@dcmacritchie.com
(603) 845-3572

PROFESSIONAL EXPERIENCE

1995 to 2002 and 2008 to Present – DC MacRitchie, Inc., Exeter, NH – Principal. D.C. MacRitchie, Inc. Responsible for company operations, preparation of site development plans, subdivisions, septic system designs, roadway design, drainage design and construction management.

2006 to 2008 – Engineering Division Manager, Hancock Associates, Salem, NH. Responsible for day-to-day operations, business development, and all engineering/construction activities occurring at Hancock's Salem, New Hampshire location. Sample projects include design and preparation of permit site plans for campus improvements at Tufts University, Endicott College, and management services for the Coakley Landfill Superfund Site in North Hampton, New Hampshire.

2001 to 2006 – General Manager/Partner, Great Mountain View Estates, LLC. Responsible for the managing all aspects of this business, including land acquisitions, securing funding, development of conceptual, preliminary, and final designs, preparation of all permit applications, coordination with soil scientists, wetland scientists, archeologists, traffic engineers, hydrogeologists, geotechnical engineers, and utility companies.

2002 to 2004 – USFilter, Lynn, MA – Operations Manager/Project Manager. Managed all aspects of design-build capital improvements projects ranging in value from \$20 million to \$48 million. Projects included combined sewer overflow (CSO) abatement and wastewater treatment plant upgrades.

1993 to 1995 – Colich and Sons (General Contractor, Environmental Construction), Gardena, CA – Project Manager. Responsible for coordinating subcontractors, operations, preparation of payment applications, field engineering, change order negotiations, and Primavera P3® scheduling for multiple projects, including a \$26 million Outfall Sewer Rehabilitation Project and an \$8 million Stormwater Pipeline/Detention Basin/Pump Station Construction.

1990 to 1993 – Montgomery Watson (Engineering), Pasadena, CA. -- Project Engineer. Worked on the Los Angeles Collection System Task Force under the Los Angeles Collection Systems Engineering Division. Developed a \$190 million sewer system improvement master plan for the Greater Downtown Los Angeles area and participated in the development of master plans for several surrounding areas. The project included build-out analysis, constructability and cost assessments, and design of sewer collection system improvements.

1989 to 1990 – Hazen and Sawyer (Engineering), Hollywood, FL. -- Engineer. Designed reuse water distribution network, pump stations, booster pump stations, and wastewater treatment system components. Performed construction phase services on waste water treatment plant projects.

EDUCATIONAL BACKGROUND

Master of Science Degree, **Environmental Engineering**, Loyola Marymount University, Los Angeles, 1992

Bachelor of Science Degree, Cum Laude, **Civil Engineering**, University of Massachusetts, Dartmouth, 1989

Bachelor of Science Degree, Cum Laude, **Construction Engineering**, University of Massachusetts, Dartmouth, 1988.

LICENSES and CERTIFICATIONS

Professional Engineer (Civil), New Hampshire

Professional Engineer (Civil), Massachusetts

New Hampshire Subsurface Sewage Disposal System Designer

New Hampshire Certified Septic System Evaluator

Massachusetts Soil Evaluator

40 hour hazardous waste trained

Certified Construction Documents Technologist



Glenn D. Jarvis, PE

Senior Project Specialist, Structural Engineering

Mr. Jarvis is a Senior Project Specialist of Structural Engineering with nearly 40 years of experience in roadway bridge design, bridge evaluation, roadway design, waterfront structures, and construction inspection. He is familiar with bridges on limited access highways, state routes, and local roads. His wide range of project experience includes commercial, industrial, municipal, and educational facilities for new structures in addition to rehabilitation of and modifications to existing ones. His responsibilities include structural analysis and design; project management; and the preparation of contract drawings, specifications, and cost estimates.

YEARS EXPERIENCE

- 11 With This Firm
- 28 With Other Firms

EDUCATION

BS, Structural Engineering
University of Connecticut

LICENSE & CERTIFICATIONS

Professional Engineer - CT, RI, MA

FHWA-Safety Inspection of In-Service
Bridges

2012 Domestic Scan on ABC
Connections Findings &
Recommendations

Contech Engineered Solutions ABC
Bridge Concepts

Post-Disaster Response (NYC DEP) | Ulster & Greene Counties, NY

Senior Structural Engineer responsible for providing emergency safety inspection of bridges and damage assessment of bridges, culverts, retaining walls, roads, rivers, and streams in the aftermath of Tropical Storm Irene. Provided recommendations for short- and long-term repairs and/or closure of bridges and roads in unsafe condition. Provided written inspection reports for all bridges and provided GPS coordinates and damage assessment reports for retaining walls and stream bank erosion.

Active Adult Housing, Evens Parcel | Canton, CT

Project Structural Engineer responsible for performing a construction inspection for the replacement of stone masonry retaining walls with Versa-Lok retaining walls.

Duggan Elementary School | Waterbury, CT

Project Structural Engineer responsible for the design of cast-in-place site retaining walls as part of a school renovation and addition.

Retaining Walls 524 & 546 East Center Street | Manchester, CT

Designed a precast block gravity wall for a private driveway and designed repairs to an existing timber retaining wall that was tilting.

River Road Bridge over Pomperaug River (LOTPIP) | Southbury, CT

Project Manager providing design services relating to the superstructure replacement of the River Road Bridge over Pomperaug River. The existing bridge was constructed in 1962 and is a three span structure (48'-88'-48') with a superstructure that consists of steel beams with a cast-in-place concrete deck. The superstructure consists of a 3-span continuous steel beam and precast concrete decks. Scour mitigation measures were also provided at the South pier.

Vineyard Road Bridge over Burlington Brook (CTDOT Project No. 20-106-FLBP) | Burlington, CT

Project Manager for all phases of design including the preparation of a structure type study, design reports, complete construction documents, and construction cost estimate for the reconstruction of the Vineyard Road Bridge (No. 05916) in Burlington, Connecticut. Prepared local permit applications and property maps for rights-of-way.



Michael R. Gagnon, PE

Senior Project Specialist, Civil Engineering

Mr. Gagnon brings over 30 years of diverse project experience with the preparation of feasibility studies, engineering reports, construction drawings, regulatory permits, technical specifications, and cost estimates. Mr. Gagnon has been responsible for engineering services associated with many transportation, land development, and water resource projects throughout southern New England from inception through construction. He has expertise in stormwater management design and hydraulic modeling. He has vast knowledge of local, state, and federal land use and environmental regulations, with several years of project development experience and coordination with local and state agencies including MassDOT, MassDEP, CTDEEP, local planning boards, and conservation commissions. Mr. Gagnon has managed many small- to medium-sized projects that include technical and fiscal responsibilities, client communications, supervision of support staff, and coordination with outside consultants.

YEARS EXPERIENCE

- 8** With This Firm
- 27** With Other Firms

EDUCATION

BS, Civil Engineering
Roger Williams University

LICENSE & CERTIFICATIONS

Professional Engineer - MA, CT, NH
National Council of Examiners for
Engineering and Surveying (NCEES)
Certification

AFFILIATIONS

American Society of Civil Engineers
(ASCE)
Boston Society of Civil Engineers
Section (BSCES)

Agawam Sportsplex | Agawam, MA

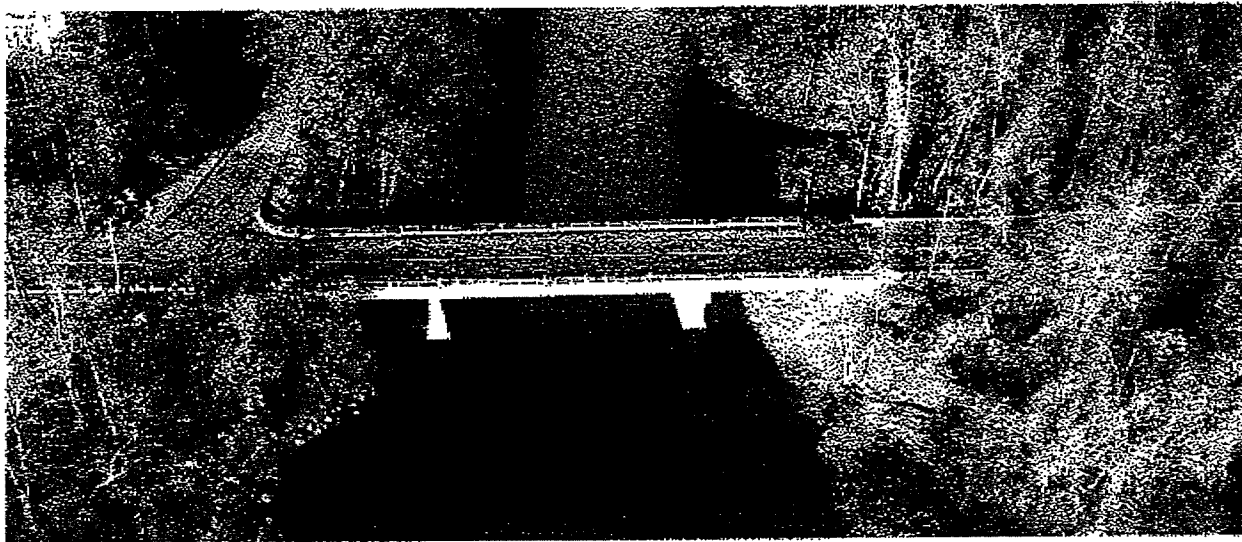
Senior Engineer responsible for stormwater management design and permits associated with a new private athletic facility in the Town of Agawam, Massachusetts. Also provided representation at Town of Agawam planning board and conservation commission hearings.

Chicopee Riverwalk | Chicopee, MA

Senior Engineer responsible for the preparation of design drawings, environmental permits, and supporting documentation for design review submissions to MassDOT for a 1-mile segment of multiuse trail along the Chicopee River. The proposed trail was designed to generally follow a former rail line with design improvements as required to create a useable trail width while providing stability to the adjacent slopes. The project also included a challenging trail connection to the City Parks Department Facility along a steep embankment that required retaining walls with a switchback alignment in order to achieve ADA access to the project corridor.

Chicopee Distribution Center Building Expansion | Chicopee, MA

Senior Engineer responsible for the preparation of site plans and engineering documentation for site plan review for a new 38,000 square foot building expansion at a Distribution Center in Chicopee, Massachusetts. Services included the preparation of a detailed stormwater management plan that included a subsurface retention system to detain site runoff recognizing the receiving municipal stormwater collection system is at maximum capacity. Stormwater quality enhancements consisting of bioretention swales and stormwater quality treatment units were included for the site that had little or no stormwater quality measures. Also responsible for the coordination of other services by Milone & MacBroom including geotechnical engineering and construction administration which includes submittal review, RFI response, material testing, and periodic construction observation.



STRUCTURAL ENGINEERING

Services

PLANNING

- Structural Evaluations
- Preliminary Structural Design
- Material & Cost Estimating
- Feasibility Studies
- Value Engineering
- Utility Coordination

DESIGN

- Structural Design & Analysis
- Commercial, Light Industrial & Residential Buildings
- Concrete, Steel & Timber Design
- Foundations & Retaining Walls
- Pedestrian Bridges
- Dams, Tide Gates, Fish Ladders & Sluice Gates

CONSTRUCTION

- Temporary Structures
- Shop Drawing Review
- Materials Testing

INVESTIGATION

- Evaluation, Rehabilitation & Repair of Existing Structures
- Strengthening of Existing Structures

Milone & MacBroom has evolved into one of the leading engineering, landscape architecture, and environmental science organizations with an excellent reputation in structural design. Our qualified professional engineers offer technically sound, creative solutions that are cost-effective, while still maintaining flexibility and quality.

Milone & MacBroom provides a full range of structural consultation for our clients, including architects, developers, contractors, private clients, local authorities, and government entities. Our major asset is the ability to work closely and pro-actively with our clients, contributing our talents and experience wherever possible, but without preconceived ideas which may otherwise conflict with the aspirations of the project.



CIVIL ENGINEERING

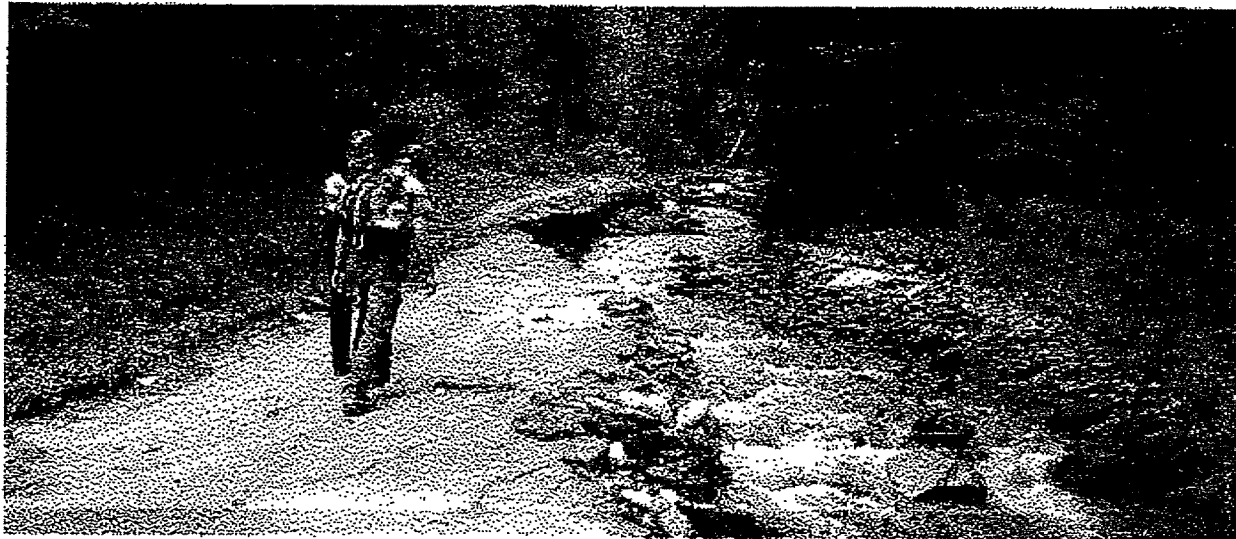
SERVICES

- Site Analysis & Selection
- Master Planning
- Site Design & Engineering
- Infrastructure & Utilities
- Water Supply Systems
- Sanitary Sewer Systems
- Land Use Permitting
- Construction Documents & Specifications
- Cost Estimating
- LEED
- Erosion Control
- Hydraulic Analysis
- Stormwater Management
- Project Management
- Low Impact Development Techniques

Civil engineering was one of the first disciplines in which Milone & MacBroom was founded on. The Civil Engineering Department has been committed to providing comprehensive site development services from concept to construction.

Site planning and infrastructure design represent the merging of the Civil Engineering and Landscape Architecture disciplines. By understanding a site's natural resources and their inherent characteristics and functions, our design professionals seek to blend creatively our client's development program within the framework of the site's opportunities and constraints.

Whether it is residential, commercial, industrial, municipal, or institutional project, Milone & MacBroom provides a full range of professional services assisting our clients from concept development to project completion.



WATER RESOURCES

Services Provided

- Watershed Planning
- River Management & Restoration Planning
- Geomorphologic Based Design
- Dam Inspection & Removal Design
- Sediment Transport Analysis
- Scour Analysis
- Steady & Unsteady HEC-RAS Modeling
- Fish Passage Design
- Hazard Mitigation Planning
- Tidal & Inland Restoration
- Lake & Pond Restoration
- Habitat Assessment
- Environmental Impact Evaluations
- Wetland Delineation
- Permitting
- Site Assessment & Remediation
- Forestry Management

Milone & MacBroom is recognized throughout the country for its leadership and innovation in the fields of water resource engineering and environmental science. As consultants to federal, state, and local government, our environmental engineers and scientists marry the principles of engineering, biology, hydrogeology, and earth sciences to develop environmentally sensitive project designs.

We have long considered it important to not only understand but also respect the local, state, and federal environmental regulations that govern this work. We understand that a design is only good if it can be permitted and built. Therefore, embedded within this group is extensive expertise in environmental permitting. Staff assist project teams throughout the firm in developing designs that improve the management of water resources and preserve our natural environment.

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*Via Email: aflanagan@andoverma.gov
And First Class Mail*

February 15, 2019

Board of Selectmen
c/o Andrew Flanagan, Town Manager
Town of Andover
36 Bartlet Street
Andover, MA 01810

Re: Frederick Drive Subdivision Modification
Supplement to Applicant's Appeal of Conservation Commission's Selection of
Peer Review Consultants

Dear Mr. Flanagan,

I represent brothers, Mark and Phillip D'Annolfo, individually and as trustees of the Frederick Drive Realty Trust ("D'Annolfos"). This letter will supplement my letter to the Select Board of February 4, 2019, appealing the Conservation Commission's designation of so-called "independent peer reviewers" in connection with the Commission's anticipated remand hearing on the D'Annolfos' proposed modification of the Frederick Drive Subdivision.

Summary of the Frederick Drive Subdivision Project

The D'Annolfos inherited most of the land shown on a 1958 subdivision plan¹, known as the Frederick Drive Subdivision from their parents. Specifically, the D'Annolfos own eight lots, Lots numbered 9 thru 16, and most of the land within Frederick Drive, as shown on Land Court Plan No. 24230C². A copy of that plan is attached hereto as **Exhibit A**. The Town of Andover is the owner of Lot 17 as shown on Plan No. 24230C,

¹ The subdivision plan was approved by the Andover Planning Board on November 18, 1958.

² There is an existing home on the property constructed in 1966. The D'Annolfo family lived there for many years. Phil D'Annolfo continues to live in the home.

including the cul de sac circle at the end of Frederick Street ("Lot 17").³ The Town acquired Lot 17 by virtue of a deed from D'Annolfo Bros., Inc. dated May 9, 1961. In that deed, a right to use and construct the subdivision road was reserved to the D'Annolfos. Lot 17 appears to lay out as two single-family house lots under the Town's current zoning requirements, as was shown in the sketch plan previously provided to the Select Board and attached hereto as Exhibit B.

Sometime in the late 1950's or early 1960's, the D'Annolfos' father began construction of Frederick Drive. However, after clearing and rough road grading the work was abruptly stopped. Frederick Drive was never paved or fully constructed. There is presently no constructed access to the Town's land, Lot 17. A section of the roadway that was cut during rough grading became wet and, over the intervening 50+ years, has become a small, isolated wetland as defined under the Town's Wetlands Bylaw. That same area is not defined as a wetland under the State Wetlands Protection Act and portions of this Town-only wetland area sustain few if any wetlands plants.

Starting in 2015, the D'Annolfos began their efforts to modify the 1958 subdivision approval, with the goal of constructing the roadway in its original location, retaining the existing home, and selling off six of their eight house lots ("Project"). To accomplish this, the D'Annolfos sought approval to modify and update the 1958 subdivision plan to meet current roadway specifications from the Town's Planning Board, and requested approval from the Town's Conservation Commission to fill the isolated wetland that had developed within the old, roadway cut. To mitigate for the loss of wetlands in the roadway cut the D'Annolfos proposed to, create nearly twice that area of vegetated wetlands elsewhere on the property; and to allow much of the maintained lawn area at the side of the existing home to revegetate naturally and be protected as a wetland in the future. The remaining two subdivision lots owned by the D'Annolfos would be occupied by, the existing home; a storm-water basin that would be constructed to handle the subdivision's storm-water runoff; and the majority of the proposed wetlands replication area.

A temporary grading and construction license, necessary for the construction of the cul de sac portion of the roadway on the Town's land, was approved by vote of the Select Board on April 25, 2016. At the suggestion of Town Counsel, a similar license was requested from the School Committee. The School Committee approved the license by vote on March 9, 2017. In connection with both approvals, the D'Annolfos represented that they would extend utilities to the Town's land and would provide two, utility connection stubs for the benefit of the Town. Those utilities are reflected in the D'Annolfos' current

³ Town Counsel has referenced a 1957 Town Meeting vote, generally authorizing the Town's acquisition of various property including a school site in the South Main Street area, as indicating that Lot 17 is under the control of the Town's School Committee. The deed of Lot 17 is to the "Inhabitants of the Town of Andover" and does not provide any indication of the purpose of the acquisition itself.

subdivision plans. A copy of the site plan sheet of the current subdivision plan set is attached hereto as **Exhibit C.**

The Planning Board retained Daniel C. MacRitchie, P.E. ("MacRitchie") as a civil engineering peer reviewer at the D'Annolfos' expense. With Mr. MacRitchie's input, the Planning Board conduct a public hearing over the course of approximately 13 months and by decision dated August 24, 2017, approved the D'Annolfos' proposed subdivision modification.

At the D'Annolfos' expense, the Conservation Commission also retained MacRitchie for civil engineering peer review services, as well as, LEC Environmental Consultants, Inc. ("LEC"), for peer review of the D'Annolfos' proposed wetlands replication and mitigation. To date the D'Annolfos have paid over \$30,000.00 in peer review fees. The Commission opened its public hearing on the D'Annolfos' notice of intent on June 7, 2016, and conducted a 19-month hearing process, closing the hearing on January 16, 2018, and issuing a decision denying the Project on February 5, 2018. The Commission's denial was based primarily on MacRitchie's opinion that the MA-DEP's Stormwater Guidelines prohibited the use of clean, imported fill under the Project's storm-water detention basin, despite communications from a senior MA-DEP's staff member indicating that their Guidelines did not prohibit the use of fill as proposed by the D'Annolfos. The D'Annolfos appealed that denial to the Massachusetts Department of Environmental Protection ("MA-DEP") and to the Superior Court. The D'Annolfos also submitted a filing under the Massachusetts Environmental Policy Act ("MEPA")

As further discussed below, the Commission and its consultants, MacRitchie and LEC, participated extensively in both the DEP appeal process and the MEPA process, submitting various materials and communications in opposition to the D'Annolfos submissions and attending site walks. On November 5, 2018, the MA-DEP issued a Superseding Order of Conditions approving the Project with insubstantial changes⁴, finding that fill material could be used under the Project's storm-water basin and rejecting the Commission's and MacRitchie's interpretation of the MA-DEP's Stormwater Guidelines. A copy of the MA-DEP's Superseding Order of Conditions is attached hereto as **Exhibit D.**

On February 8, 2019, the MEPA Office issued a certificate finding that no further action was required under MEPA and endorsing the D'Annolfos' alternatives analysis, with its preferred alternative of constructing Frederick Drive in its original approved location and

⁴ At the Commission's request, MA-DEP revoked the Superseding Order in order to give the Commission until December 7, 2018, to submit comments on the plan changes that had been made as a result of MA-DEP's review of the Project. With the Commission's urging, MA-DEP has also withheld the re-issuance of its Superseding Order pending issuance of a certificate by the MEPA Office. As the MEPA certificate was issued last week, it is anticipated that MA-DEP will soon issue their Superseding Order of Conditions.

to its full length. A copy of the MEPA certificate, without its attachments, is attached hereto as **Exhibit E**. In anticipation of the issuance of a MEPA certificate and a MA-DEP Superseding Order of Conditions, the D'Annolfos filed a motion in their Superior Court appeal, asking the Court to remand the matter back to the Commission, for the Commission to reconsider its denial of the Project in light of the anticipated State decisions and in light of the changes made to the Project during MA-DEP's review. The Court allowed that motion and remanded the matter to the Commission for its review of this additional material and the reconsideration of its prior decision.

By e-mail of January 31, 2019, the Commission provided three, so-called "peer review" proposals, from MacRitchie; LEC; and a structural engineer, Michael Gagnon, P.E. ("Gagnon"). Combined, the three peer review proposals called for the D'Annolfos to pay an additional \$18,000 in "peer review" fees. By letter to the Select Board dated February 4, 2019, the D'Annolfos appealed the Commission selection of consultants pursuant to the Commission's rule and regulation dated May 2, 2006, and Mass.Gen.Laws c. 44, s. 53G.

A more detailed statement of the D'Annolfos concerns regarding the consultants selected by the Commission follows:

**Concerns Regarding the Selection of
Daniel C. MacRitchie, P.E., DC MacRitchie, LLC**

The D'Annolfos object to the selection of MacRitchie for the following reasons:

1. MacRitchie's services for the Commission in connection with MEPA and the MA-DEP appeal reveal that MacRitchie is acting as an expert witness in opposition to the Project and would be in a conflict of interest as a peer reviewer.

MacRitchie was selected as an independent peer reviewer by the Andover Planning Board in connection with its consideration of the Project in 2016. With the benefit of MacRitchie's peer review, the Planning Board approved the Project by its decision dated August 24, 2017.

MacRitchie was also hired as a consultant of the Conservation Commission in its 2016-2018 proceeding. However, as a consultant for the Commission, MacRitchie made unsupported interpretations of MA-DEP's Stormwater Guidelines and advised the Commission that the Guidelines prohibited the use of imported clean fill material under the Project's storm-water basin. Despite receiving communications from MA-DEP staff (including the MA-DEP's lead staff person on storm-water management issues) that this interpretation was incorrect, the Commission denied the Project principally on that basis.

As discussed above, MA-DEP's Superseding Order of Conditions explicitly rejected MacRitchie's interpretation of the Guidelines.

Since the end of the Commission's hearing process in February, 2018, MacRitchie appears to have been acting as the Commission's expert witness in the MEPA process and in the MA-DEP appeal. In that role, MacRitchie has again disagreed with MA-DEP's interpretation of its own Guidelines, asserting that the Project violates a required setback distance between storm-water basin and existing slopes (an alleged violation he did not call out in his earlier peer review). However, the position of the basin opposed by MacRitchie was selected at MA-DEP's request. These unsupported and overly aggressive interpretations of the Stormwater Guidelines, counter to MA-DEP staff's own interpretations, suggest that MacRitchie is not acting as a peer reviewer but in opposition to the Project within a contested appeal process.

2. MacRitchie's comments have exceeded the scope of "peer review" and have usurped the authority of the Town's Building Commissioner and Zoning Board

In his recent comments as the Commission's expert witness in the MA-DEP appeal, MacRitchie also communicated his own interpretation and application of the Andover Zoning Bylaws. He has asserted that retaining walls proposed as part of the Project are subject to and in violation of the Town's zoning setback requirements. He appears to have done so without any consultation with the Andover Building Commissioner or the Andover Zoning Board of Appeals. Like his interpretations of MA-DEP's Guidelines, his interpretation of the zoning setback requirements in this respect appear to run counter to the Town's own application of its Zoning Bylaws. Retaining walls are commonly allowed within zoning setbacks and are not subject to the same setbacks applicable to homes and other buildings. In fact, retaining walls are quite common and often necessary within zoning setback areas. Such an illogical interpretation of the setback requirements would make many properties in Andover in violation of zoning simply because they have a retaining wall constructed along or in proximity to a property line. This issue is clearly outside the purview of an independent, civil engineering peer review. If the Commission were concerned about application of the Town's zoning requirements, the Commission need only contact the Building Inspector and Zoning Board for comment. MacRitchie's zoning interpretation appears designed to provide a basis for opposition to the Project and is not legitimate peer review.

3. MacRitchie's proposal requires the D'Annolfos to pay for services that MacRitchie has already performed as the Commission's expert witness in State appeal proceedings.

The first line item of MacRitchie's proposal, "review revised documents dated September 12, 2018" indicates that it has already been "(completed)". This work was done by

MacRitchie in support of the Commission's opposition in the MEPA and MA-DEP appeal proceedings and was not conducted as "peer review". By e-mail to Town Counsel dated February 4, 2019, a request was made for confirmation of whether the Commission's peer review proposals included charges for services that had already been completed for the Commission as part of its opposition to the Project in the MEPA and MA-DEP proceedings. No response was received.

Clearly, MacRitchie can no longer be classified as an "independent peer reviewer" of the Project. MacRitchie's services for the Commission have not and are not proposed to be limited to technical, engineering peer review. In this circumstance, MacRitchie has a conflict of interest as a paid opponent to the project. A new civil engineering peer reviewer should be selected to act as a truly independent peer reviewer in this new proceeding before the Commission.

**Concerns Regarding the Selection of Ann M. Martin,
LEC Environmental Consultants, Inc.**

The D'Annolfos object to the selection of LEC for the following reasons:

1. LEC's proposal requires the D'Annolfos to pay for services that LEC has already performed as the Commission's expert witness in State proceedings.

In its current peer review proposal, LEC has requested an additional payment from the D'Annolfos of \$9,500.00 as an initial estimated budget for its next round of so-called "peer review" services. However, as explained in its peer review proposal, much of the work that LEC requests payment for has already been completed in connection with its advocacy on part of the Commission in the MEPA and MA-DEP appeal processes. For example, LEC's scope of services specifically includes its attendance at a January 25, 2019 site visit conducted by the MEPA office.

2. LEC's services for the Commission in connection with MEPA review and the MA-DEP appeal reveal that LEC is acting as an expert witness in opposition to the Project and would be in a conflict of interest as a peer reviewer.

LEC's role was supposed to have been limited to an "independent peer review" of the Project's impacts to wetland resource areas and the D'Annolfos' plan to mitigate those impacts. However, LEC's comments on the Project have far exceeded its role as an independent peer reviewer. LEC has actively commented on the Project's storm-water management design, which has already received extensive review by MacRitchie. At the January 25th MEPA site visit referenced in LEC's current proposal, LEC advocated to the MEPA staff member that a preferred alternative for the Project would be a shortening of Frederick Drive so that it no longer provided access or frontage to the Town's land, Lot

17. These services had no relationship to LEC acting as a "peer reviewer". LEC's position ran directly counter to the interests of the Town as the owner of Lot 17. It also ran counter to one of the benefits of the Project, as presented to the Select Board and to the School Committee, that the Project would extend the roadway and utilities to the Town's currently landlocked property. Both the Select Board and the School Committee have already approved temporary construction licenses to allow for the construction of the roadway in its original, approved location.

MEPA staff, understanding the potential detriment to the Town that would result if the road was not extended to its originally approved length, requested confirmation whether the Town was relinquishing its right to access Lot 17 over the subdivision road. Through Town Counsel, the School Committee provided a brief comment to MEPA that it was not willing to waive its access rights over the subdivision road. However, no comments were submitted by the Select Board on this issue and it is unclear whether LEC's proposed shortening of the subdivision road, so that it no longer extended to Lot 17, was ever brought to the attention of the Select Board.

LEC's actions have far exceeded the scope of an independent peer reviewer and LEC has assumed an opposition role to the Project on behalf of the Commission. LEC can no longer act in an independent peer review capacity on the Project and would be in a conflict of interest position if it were to do so. Given the importance of the Project to both the D'Annolfos and the Town, the D'Annolfos request that a new peer reviewer be selected to review the Project's wetlands impacts and mitigation from an independent perspective.

Objection to Michael R. Gagnon PE,
Milone & MacBroom

The third peer reviewer the Commission seeks to retain at the D'Annolfos' expense proposes to provide "technical peer review of plans and supporting documentation relative to the structural design of the proposed retaining wall." The Applicant objects to the selection of this peer reviewer on the basis that his qualifications and his proposed scope of services are not relevant and beyond the authority of the Commission. The structural design and adequacy of the Project's proposed retaining wall is a matter properly within the authority of the Andover Building Commissioner and should not be usurped by the Commission. It is also not an issue relevant to the Commission's interest in the protection of wetland resource areas. The proposed retaining wall will require a building permit application from the Andover Building Department prior to construction. The D'Annolfos have already confirmed that a building permit would be obtained for the retaining wall prior to construction commencing for the Project and that their building permit application would include a structural engineering design. The D'Annolfos have also confirmed that they would fully comply with any requests of the Town's Building Commissioner, Chris Clemente, in connection with that application (including the

Board of Selectmen
c/o Andrew Flanagan, Town Manager
February 15, 2019
Page 8

funding of a structural engineering peer review if Commissioner Clemente requested such a review as part of the building permit process). There is no legitimate reason for the Commission to duplicate or invade the authority reserved to the Building Commissioner under the State Building Code. Further, any "dual review" on this issue by both the Commission and the Building Department would potentially lead to design and construction conflicts. Where the building code provides a specific process for the review of the retaining wall design, the Commission's designation of a structural engineering peer reviewer is inappropriate. Thus, despite the quality of Mr. Gagnon's qualifications, they are irrelevant to the Commission's proceeding. The D'Annolfos have no objection to an appropriate peer review of the structural design of the retaining walls through the usual building permit process.

The D'Annolfos do not object to a reasonable peer review of the limited changes that have been made to the Project through the MA-DEP process. However, for the reasons discussed above, they do not believe that the peer reviewers designated by the Commission should be tasked with that work. It is requested that the Select Board direct the Commission to select new peer reviewers, in consultation with the D'Annolfos' Project team, to conduct the remaining peer review services, and that any structural peer review of the Project's retaining walls remain within the purview of the Town's Building Commissioner.

Thank you for your time and consideration of these issues.

Very truly yours,
JOHNSON & BORENSTEIN, LLC



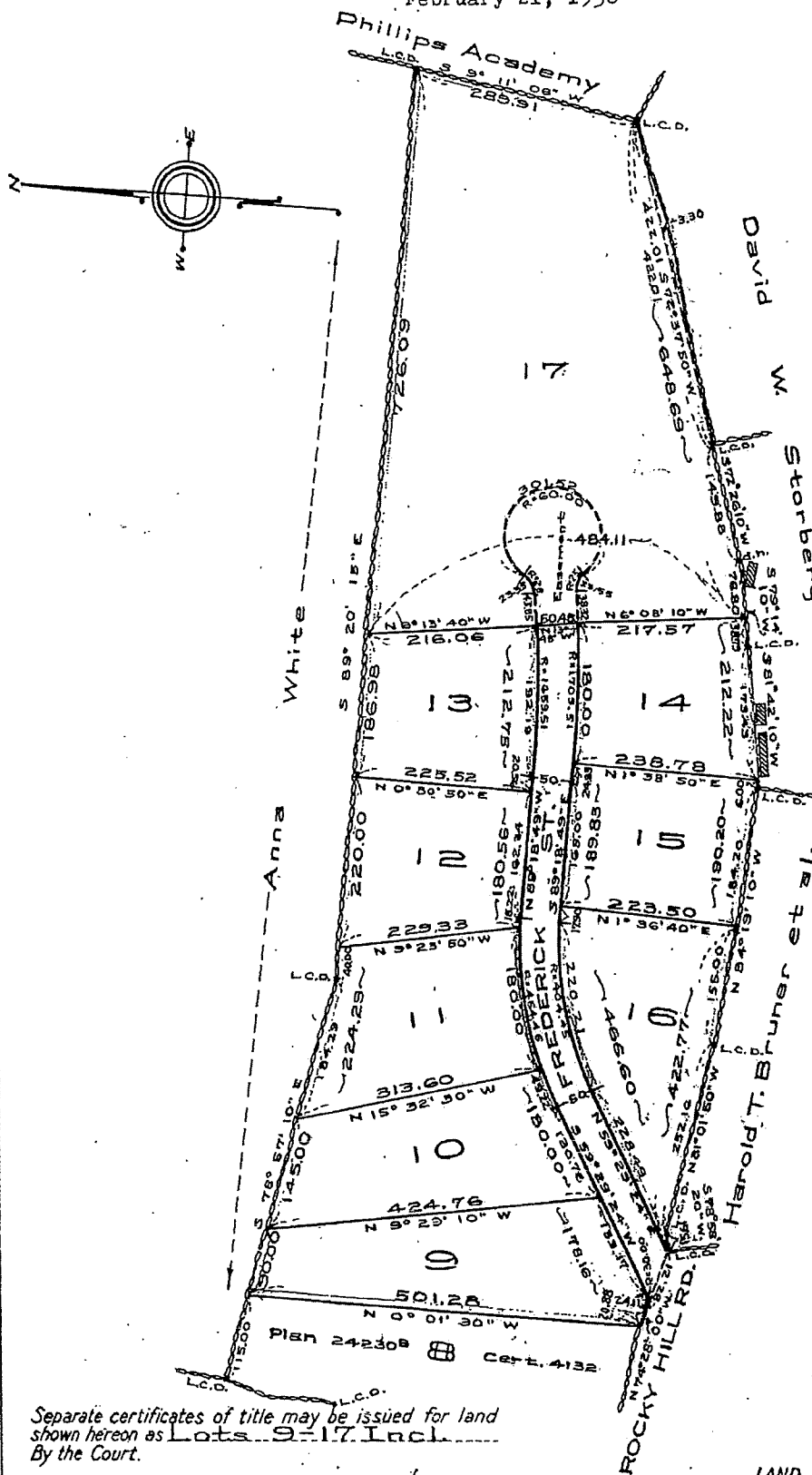
Donald F. Borenstein

DFB/mf

Cc: Thomas J. Urbelis, Esq. *via email*
Andover Conservation Commission, c/o Robert Douglas *via email*
David A. Griecci, P.E., Andover Consultants *via email*
D. Mark D'Annolfo *via email*
Phillip D'Annolfo *via email*

24230^C

SUBDIVISION PLAN OF LAND IN ANDOVER
Dana F. Perkins & Sons Inc. Surveyors
February 21, 1958



Essex North Registry District
May 11, 1961
RECEIVED FOR REGISTRATION
at 10 O'CLOCK 50 m
NOTED ON CERTIFICATE NO. 5015
IN REGISTRATION BOOK 34 PAGE 261

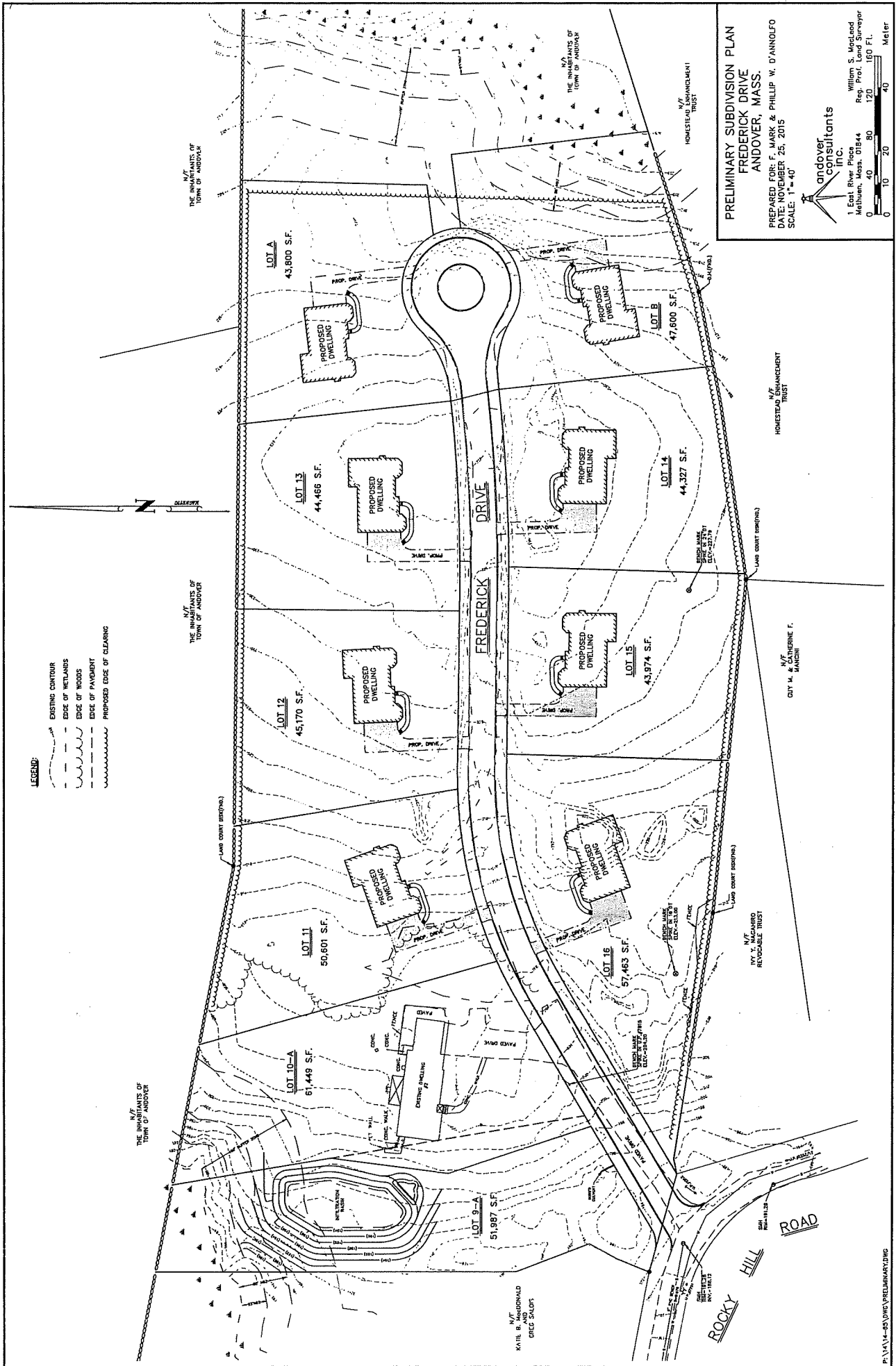
Subdivision of Part of Land
Shown on Plan 24230-A
Filed with Cert. of Title No. 4001
North Registry District of Essex County

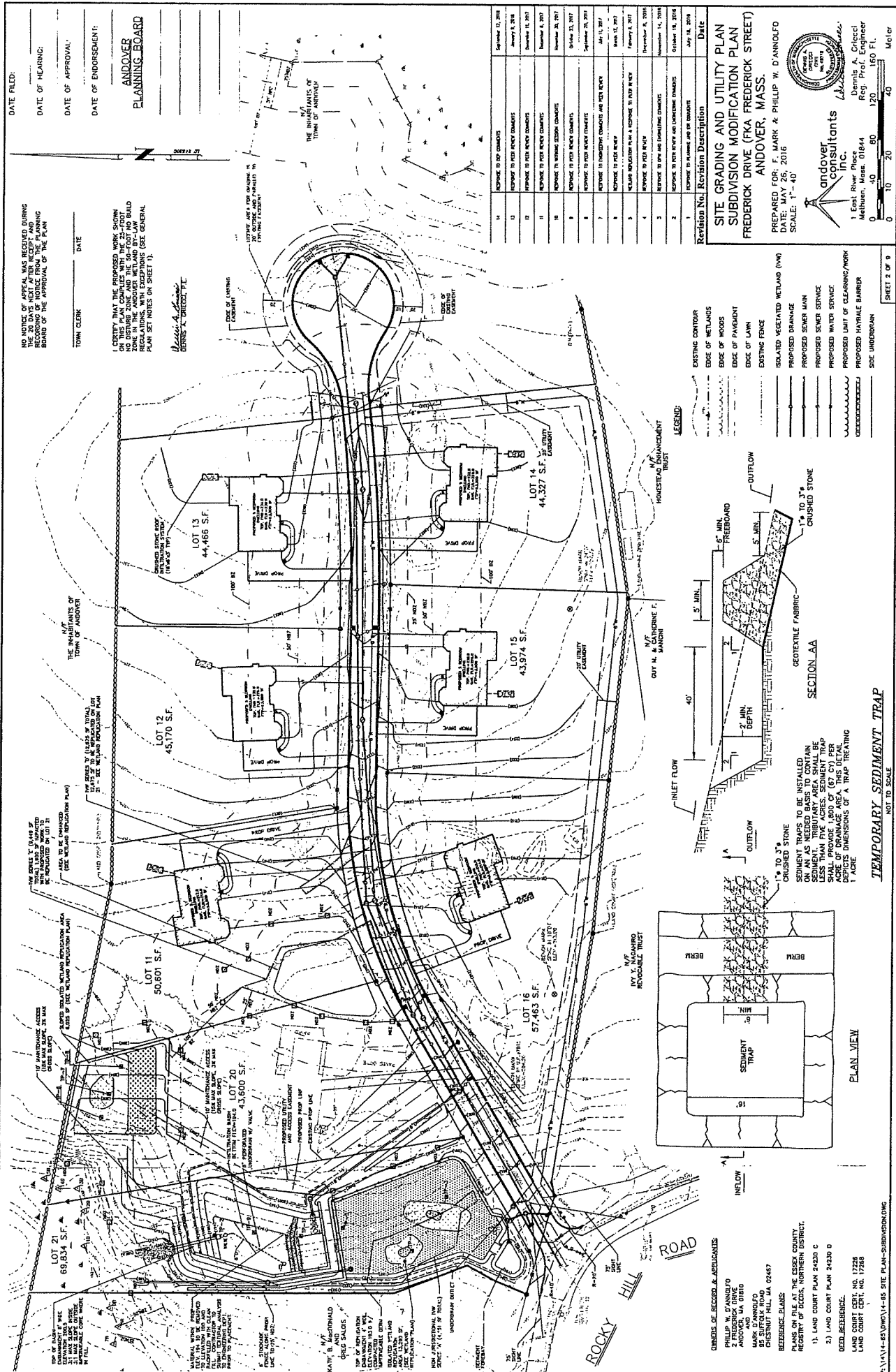
Separate certificates of title may be issued for land
shown hereon as Lots 9-17 Incl.
By the Court.

Margaret M. O'Donnell
Recorder.

Copy of part of plan
filed in
LAND REGISTRATION OFFICE
MAY 15, 1959
Scale of this plan 160 feet to an inch
C.M. Anderson, Engineer for Court

MAY 15, 1959





NO NOTICE OF APPEAL WAS RECEIVED DURING THE 30 DAYS NEXT AFTER RECEIPT AND NOTICE OF APPEAL WAS NOT RECEIVED BY THE BOARD OF THE APPROVAL OF THE PLAN.

DATE FILED: _____
DATE OF HEARING: _____
DATE OF APPROVAL: _____
DATE OF ENDORSEMENT: _____

TOWN CLERK _____ DATE _____

I CERTIFY THAT THE PROPOSED WORK SHOWN ON THIS PLAN COMPLES WITH THE 25-FOOT ZONE IN THE ANDOVER MET AND BY-LAW REGULATIONS, WITH EXCEPTIONS (SEE GENERAL PLAN SET NOTES ON SHEET 1).

Philip W. D'Annolfo
PHILIP W. D'ANNOLFO, P.E.
REGISTERED PROFESSIONAL ENGINEER
MASSACHUSETTS REG. NO. 01844

ANDOVER
PLANNING BOARD

Revision No.	Revision Description	Date
1	RESPONSE TO TOWN COMMENTS	September 12, 2016
2	RESPONSE TO TOWN COMMENTS	January 1, 2017
3	RESPONSE TO TOWN COMMENTS	December 15, 2017
4	RESPONSE TO TOWN COMMENTS	December 15, 2017
5	RESPONSE TO TOWN COMMENTS	December 15, 2017
6	RESPONSE TO TOWN COMMENTS	December 15, 2017
7	RESPONSE TO TOWN COMMENTS	December 15, 2017
8	RESPONSE TO TOWN COMMENTS	December 15, 2017
9	RESPONSE TO TOWN COMMENTS	December 15, 2017
10	RESPONSE TO TOWN COMMENTS	December 15, 2017
11	RESPONSE TO TOWN COMMENTS	December 15, 2017
12	RESPONSE TO TOWN COMMENTS	December 15, 2017
13	RESPONSE TO TOWN COMMENTS	December 15, 2017
14	RESPONSE TO TOWN COMMENTS	December 15, 2017
15	RESPONSE TO TOWN COMMENTS	December 15, 2017
16	RESPONSE TO TOWN COMMENTS	December 15, 2017
17	RESPONSE TO TOWN COMMENTS	December 15, 2017
18	RESPONSE TO TOWN COMMENTS	December 15, 2017
19	RESPONSE TO TOWN COMMENTS	December 15, 2017
20	RESPONSE TO TOWN COMMENTS	December 15, 2017
21	RESPONSE TO TOWN COMMENTS	December 15, 2017
22	RESPONSE TO TOWN COMMENTS	December 15, 2017
23	RESPONSE TO TOWN COMMENTS	December 15, 2017
24	RESPONSE TO TOWN COMMENTS	December 15, 2017
25	RESPONSE TO TOWN COMMENTS	December 15, 2017
26	RESPONSE TO TOWN COMMENTS	December 15, 2017
27	RESPONSE TO TOWN COMMENTS	December 15, 2017
28	RESPONSE TO TOWN COMMENTS	December 15, 2017
29	RESPONSE TO TOWN COMMENTS	December 15, 2017
30	RESPONSE TO TOWN COMMENTS	December 15, 2017

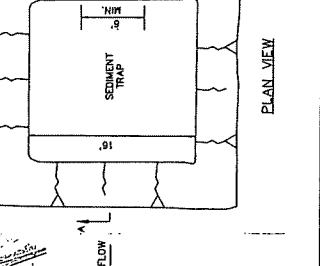
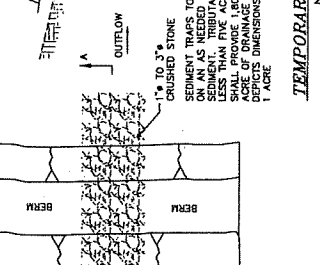
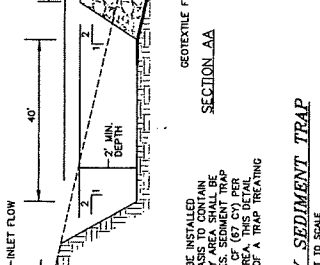
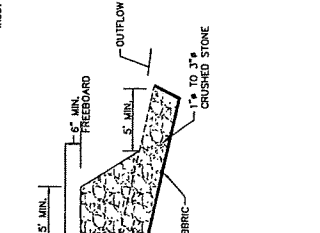
SITE GRADING AND UTILITY PLAN
SUBDIVISION MODIFICATION PLAN
FREDERICK DRIVE (FKA FREDERICK STREET)
ANDOVER, MASS.

PREPARED FOR: F. MARK & PHILIP W. D'ANNOLFO
DATE: MAY 26, 2016
SCALE: 1" = 40'

andover consultants inc.
1 East River Street
Andover, Mass. 01844
Tel: 978.686.1200
Fax: 978.686.1201
www.andoverconsultants.com

Philip W. D'Annolfo, P.E.
Registered Professional Engineer
Massachusetts Reg. No. 01844

- LEGEND:
- EXISTING CONTOUR
 - EDGE OF WETLANDS
 - EDGE OF PAVEMENT
 - EDGE OF LAWN
 - EXISTING FENCE
 - ISOLATED VEGETATED WETLAND (IWM)
 - PROPOSED DRAINAGE
 - PROPOSED SEWER MAIN
 - PROPOSED SEWER SERVICE
 - PROPOSED WATER SERVICE
 - PROPOSED LIMIT OF CLEARING/WORK
 - PROPOSED NATURAL BARRIER
 - SIDE UNDERPASS

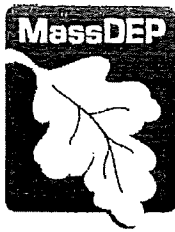


ORDER OF RECORD & APPLICANTS
PHILIP W. D'ANNOLFO
2 FREDERICK DRIVE
ANDOVER, MA 01844
55 GILBERT ROAD
CHESTNUT HILL, MA 02467

PLANS ON FILE AT THE ESSEX COUNTY
RECORDS OF DEEDS, NORTHERN DISTRICT.

1. LAND COURT PLAN 24230 C
2. LAND COURT PLAN 24230 D

DEED REFERENCE:
LAND COURT CASE NO. 17265
LAND COURT CENT. NO. 17268



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

November 5, 2018

Mr. Mark D'Annolfo and Mr. Phillip D'Annolfo
c/o Johnson & Borenstein, LLC
12 Chestnut Street
Andover, MA 01810-3706

RE: **WETLANDS/ANDOVER**
DEP File #090-1269
Frederick Drive
Superseding Order of Conditions

Dear Sirs:

The Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program ("MassDEP"), has completed its review of the file referenced above in preparation for issuance of a Superseding Order of Conditions ("SOC"). Pursuant to the provisions of the Wetlands Protection Act (the "Act") under Massachusetts General Laws, Chapter 131, Section 40, MassDEP is issuing the enclosed SOC allowing the project based upon: 1) information and plans submitted; 2) information gathered during the site inspection; and 3) conditions MassDEP has deemed necessary to protect the statutory interests identified in the Act.

The approximately ten (10) acre project site is located on Frederick Drive in Andover, MA. The site presently contains a single family home. The site was previously altered by excavation and grading for the extension of Frederick Drive. This work, however, stopped and the roadway extension was never completed. The project as proposed in the Notice of Intent ("NOI") is for the construction of an approximately 1,050 foot long subdivision roadway associated with a seven lot single-family home subdivision and stormwater management systems.

On February 5, 2018, the Andover Conservation Commission (the "Commission") issued an Order of Conditions ("OOC") denying the project. In this decision the Commission found that the information submitted by the Applicant pertaining to the proposed infiltration basin as well as discharge from the infiltration basin was insufficient to describe the effect of the work on the interests identified in the Act and Regulations.

You filed an appeal on February 14, 2018 with MassDEP in response to the Commission's OOC based on your opinion that the information provided to the Commission regarding the proposed stormwater management systems met all performance standards set forth in the Act and Regulations.

On April 4, 2018, MassDEP conducted a site inspection. In attendance were you, your representatives, members of the Commission and its representatives. During the site visit, the proposed project was discussed and the group walked the project site to observe existing site conditions.

MassDEP's review of the file and site inspection confirms that the project site contains the following Area Subject to Protection under the Act: Bordering Vegetated Wetlands ("BVW"). This area is significant to the statutory interests listed on the attached form. Only a portion of the proposed infiltration basin, an area of grading for the proposed cul-de-sac associated with the subdivision roadway, and a replicated wetland associated with the filling of an Isolated Vegetated Wetland ("IVW") are located within the Buffer Zone to BVW. Under the Regulations, housing developments comprised of detached single-family dwellings on five to nine lots are required to meet the Stormwater Management Standards to the maximum extent practicable provided there is no discharge that may potentially affect a critical area.

On June 5, 2018, MassDEP issued a letter requesting the following additional information:

- In accordance with the MassDEP Stormwater Handbook under volume 2, Chapter 2, page 88, MassDEP advised that if the slope adjacent to the proposed infiltration basin was greater than 15% the infiltration basin must be moved at least 50 feet away from the top of the slope.
- An explanation of the use of the proposed underdrains located on either side of the proposed subdivision roadway.
- An explanation about how flows emanating from the lower section of the proposed subdivision roadway would be treated in order to manage post-peak discharge rates.
- An explanation as to whether or not the proposed "Diversion Swale" would intercept and/or treat stormwater discharge from the proposed subdivision roadway.

On July 27, 2018, your representative provided a letter in response to MassDEP's request for additional information. The letter states that neither the proposed underdrains nor Diversion Swale would be utilized to convey or treat stormwater from the proposed subdivision roadway. The letter further states that the peak rate of discharge, measured at the design point (northwest property corner), will meet the requirement to reduce post-peak discharge rates. It was also stated in the letter that, as currently designed, the top berm of the proposed infiltration basin is approximately 40' from the start of a slope greater than 15%.

On September 19, 2018, your representative submitted a revision to the design and location of the proposed infiltration basin in order to achieve a 50 foot setback from the top of the adjacent slope.

At the site visit, all parties requested that MassDEP provide a statement as to whether or not infiltration practices may be conducted over fill. On July 2, 2018, MassDEP responded that stormwater infiltration is allowed through placed clean material suitable for infiltration. The intent of prohibitions described in the Stormwater Management Handbook is to not allow stormwater infiltration to be induced through fill material composed of asphalt, brick, concrete, construction debris, and materials classified as solid or hazardous waste. MassDEP has included Condition #32 in the SOC requiring the applicant to provide MassDEP and the Commission with an analysis of any fill proposed to be utilized on the Site.

It is MassDEP's opinion that the project, as currently proposed, meets the performance standards under 310 CMR 10.55 and 310 CMR 10.05(6)(k) for BVW and Stormwater Management, respectively. It is MassDEP's opinion that the enclosed SOC allowing the project serves to protect the interests of the Act, Massachusetts General Laws, Chapter 131, Section 40. Please be advised that it is MassDEP's responsibility to address only those interests identified in the Act. However, MassDEP reserves the right, should there be further proceedings in this case, to raise additional issues and present further evidence as may be appropriate. Should any party dispute these findings, please consult the language in the Order that specifies your rights and procedures for appeal.

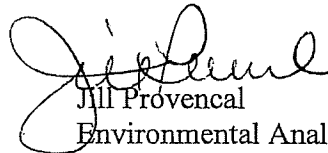
The applicant is reminded, as outlined in MassDEP's March 23, 2018 site visit letter and June 5, 2018 Information Request letter, that as the project proposes to fill over 5,000 square feet of IVW, the project will need to file for a 401 Water Quality Certificate with MassDEP, a 404 Water Quality Certificate with the USACOE and in accordance with 310 CMR 10.07, file an Environmental Notification Form under the Massachusetts Environmental Policy Act, M.G. L. c. 30 ss 61 through 62H. Until such time that the Secretary of Energy and Environmental Affairs issues a MEPA Certificate, MassDEP is prohibited from issuing a 401 Water Quality Certificate.

Should you have any questions, please contact Jill Provencal at (978) 694-3250.

Sincerely,



Rachel Freed
Deputy Regional Director
MassDEP – NERO



Jill Provencal
Environmental Analyst
Wetlands Program - NERO

cc: Andover Conservation Commission, Town Offices, 36 Bartlett Street, Andover, MA 01810



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1269

A. General Information

1. From: Northeast Regional Office
Massachusetts Department of Environmental Protection (MassDEP/the Department)
2. This issuance is for (check one):
a. ☒ Superseding Order of Conditions
b. ☐ Amended Superseding Order of Conditions
3. To: Applicant:
F. Mark and Phillip W. D'Annolfo
a. First Name, Last Name
b. Company
c. Organization
95 Suffolk Road
d. Mailing Address Line 1
Chestnut Hill MA 02467
e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):
a. First Name b. Last Name
c. Organization
d. Mailing Address Line 1
e. City/Town f. State g. Zip Code
5. Project Location:
Frederick Drive Andover
a. Street Address b. City/Town
63 9, 9H
c. Assessors Map/Plat Number d. Parcel/Lot Number
- Latitude and Longitude, if known:
e. Latitude f. Latitude



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1269

A. General Information (cont'd)

6. Property recorded at the Registry of Deeds (attach additional information if more than one parcel):

Essex North	14360
a. County	b. Certificate (if registered land)
114	285
c. Book	d. Page

7. Dates:
- | | | |
|----------------------|----------------------------|---------------------------|
| June 7, 2016 | February 5, 2018 | April 4, 2018 |
| a. Date NOI Received | b. Date Local Order Issued | c. Date of SOC Site Visit |

8. Final Approved Plans and Other Documents (attach additional plans or document references):

"Subdivision Modification Plan, Frederick Drive (fka Frederick Street) Andover, Massachusetts"

a. Plan Title	
Andover Consultants, Inc.	Dennis a. Griecci, P.E.
b. Prepared By	c. Signed and Stamped By
September 12, 2018	various
d. Final Revision Date	e. Scale
"Storm Water Pollution Prevention Plan," prepared by Andover Consultants, Inc.	September 12, 2018

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

a. <input checked="" type="checkbox"/> Public Water Supply	b. <input type="checkbox"/> Land Containing Shellfish	c. <input checked="" type="checkbox"/> Prevention of Pollution
d. <input checked="" type="checkbox"/> Private Water Supply	e. <input type="checkbox"/> Fisheries	f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat
g. <input checked="" type="checkbox"/> Groundwater Supply	h. <input checked="" type="checkbox"/> Storm Damage Prevention	i. <input checked="" type="checkbox"/> Flood Control

2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



B. Findings (cont'd)

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) a. linear feet
- | Resource Area | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|--|---------------------|----------------------|----------------------|-----------------------|
| 4. <input type="checkbox"/> Bank | a. linear feet | b. linear feet | c. linear feet | d. linear feet |
| 5. <input type="checkbox"/> Bordering Vegetated Wetland | a. square feet | b. square feet | c. square feet | d. square feet |
| 6. <input type="checkbox"/> Land Under Waterbodies and Waterways | a. square feet | b. square feet | c. square feet | d. square feet |
| | e. c/y dredged | f. c/y dredged | | |
| 7. <input type="checkbox"/> Bordering Land Subject to Flooding | a. square feet | b. square feet | c. square feet | d. square feet |
| Cubic Feet Flood Storage | e. cubic feet | f. cubic feet | g. cubic feet | h. cubic feet |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding | a. square feet | b. square feet | | |
| Cubic Feet Flood Storage | c. cubic feet | d. cubic feet | e. cubic feet | f. cubic feet |
| 9. <input type="checkbox"/> Riverfront area | a. total sq. feet | b. total sq. feet | | |
| Sq feet within 100 feet | 0 | 0 | | |
| | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq feet between 100-200 feet | g. square feet | h. square feet | i. square feet | j. square feet |

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

10. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) a. linear feet
11. ☐ Designated Port Areas - Indicate size under Land Under the Ocean, below
- | | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|--|---------------------|----------------------|----------------------|-----------------------|
| 12. <input type="checkbox"/> Land Under the Ocean | a. square feet | b. square feet | | |
| | c. c/y dredged | d. c/y dredged | | |
| 13. <input type="checkbox"/> Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below. | | | | |



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1269

B. Findings (cont'd)

- | | | | | |
|--|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 14. <input type="checkbox"/> Coastal Beaches | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 15. <input type="checkbox"/> Coastal Dunes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. c/y | d. c/y nourish. |
| 16. <input type="checkbox"/> Coastal Banks | <u> </u> | <u> </u> | | |
| | a. linear feet | b. linear feet | | |
| 17. <input type="checkbox"/> Rocky Intertidal Shores | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 18. <input type="checkbox"/> Salt Marshes | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. square | d. square feet |
| 19. <input type="checkbox"/> Land Under Salt Ponds | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| | <u> </u> | <u> </u> | | |
| | c. c/y dredged | d. c/y dredged | | |
| 20. <input type="checkbox"/> Land Containing Shellfish | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | a. square feet | b. square feet | c. square | d. square feet |
| 21. <input type="checkbox"/> Fish Runs - Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above | <u> </u> | <u> </u> | | |
| | a. c/y dredged | b. c/y dredged | | |
| 22. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | <u> </u> | <u> </u> | | |
| | a. square feet | b. square feet | | |
| 23. <input type="checkbox"/> Riverfront area | <u> </u> | <u> </u> | | |
| | a. total sq. feet | b. total sq. feet | | |
| Sq feet within 100 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | c. square feet | d. square feet | e. square | f. square feet |
| Sq feet between 100-200 feet | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| | g. square feet | h. square feet | i. square | j. square feet |

C. General Conditions Under Massachusetts Wetlands Protection Act

Brief Project Description of Permitted Activities:

Construction of a subdivision roadway and stormwater management systems.



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MA DEP"]
"File Number 090-1269 _____"



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the "Project") is (1) ☒ is not (2) ☐ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**
 - a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (See attached sheet(s) or below for additional Special Conditions numbered 20 through 40.

See attached



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program
Superseding Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1269

D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions # 4 or # 6.

Issued by: **Massachusetts Department of Environmental Protection:**

Northeast

MassDEP Regional Office

Rachel Freed

Deputy Regional Director Signature

Rachel Freed

Deputy Regional Director Printed Name

November 5, 2018

Date

This Order is issued to the applicant as follows:

☐ by Hand delivery on

☒ by certified mail on:

11-5-18

Date

Date – Certified Mail #



F. Appeal Rights and Time Limits

The applicant, the landowner, the conservation commission, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Massachusetts Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP – Northeast Region
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

In the event that a ten-resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;



Massachusetts Department of Environmental Protection
Bureau of Water Resources – Wetlands Program

Superseding Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

090-1269

F. Appeal Rights and Time Limits (cont.)

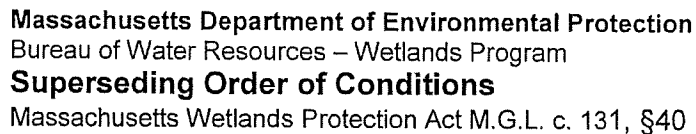
- f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.



090-1269

This Superseding Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Department.

205B Lowell Street, Wilmington, MA 01887
MassDEP Regional Office Address

Frederick Drive, Andover, MA
Project Location (Street and Town)

MassDEP File Number

Essex North
County

Page

Page

Signature of Applicant

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 090-1269

Special Conditions

20. All work shall conform with the following plans, reports and special conditions:

- a. "Subdivision Modification Plan, Frederick Drive (aka Frederick Street) Andover, Massachusetts," prepared by Andover Consultants, Inc., final revision date September 12, 2018.
- b. "Storm Water Pollution Prevention Plan," prepared by Andover Consultants, Inc., final revision date September 12, 2018.

21. This Superseding Order supersedes all previous Orders issued for this project, DEP File#090-1269. All work shall conform to the Notice of Intent and plans and documentation referenced above unless otherwise specified in this Superseding Order. In case of a conflict, the Conditions of this Superseding Order shall prevail.

22. A copy of this Superseding Order shall be included in all construction contracts and shall supersede any conflicting requirements.

23. A copy of this Superseding Order as well as the plans and reports referenced in Condition #20 shall be available on site while activities regulated by this Order are being performed. In addition to the owners, all contractors and subcontractors shall be held responsible for compliance with this Superseding Order.

24. No work shall commence on-site until all appeal periods have elapsed and this Superseding Order of Conditions has been recorded with the Registry of Deeds and MassDEP has been formally notified via the form provided at the end of this Order.

25. This Superseding Order shall apply to any successor or assigns in interest or control and any other party engaging in activity on the property identified in the Notice of Intent.

26. Any proposed or executed change in the plans approved under this Superseding Order shall require the applicant to file a new Notice of Intent with the conservation commission or to inquire of MassDEP in writing whether the change is substantial enough to require a new filing. A copy shall be sent at the same time to the Andover Conservation Commission. Any errors in the plans or information submitted by the applicant shall be considered changes and the above procedures shall be followed.

27. Members and agents of MassDEP and the Andover Conservation Commission shall have the right to enter and inspect the premises to evaluate compliance with the conditions contained in this Superseding Order, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.

28. Prior to the commencement of any activity on the site, there shall be a pre-construction meeting between the project supervisor, the contractor responsible for the work, a representative of the Andover Conservation

Commission and a representative of MassDEP to ensure that the requirements of the SOC are understood. Arrangements for the meeting shall be made at least two (2) weeks prior to any activity.

29. Prior to the start of work, the applicant shall submit a construction sequence to MassDEP and the Andover Conservation Commission, for approval by MassDEP. The construction sequence shall include a plan showing the location of any soil, material stockpile areas and any temporary, construction period, stormwater BMPs. Work shall not commence until MassDEP has approved the construction sequence.

30. Prior to the start of work, erosion controls consisting of silt fence and staked haybales shall be installed around the limits of work. These barriers shall serve as the limit of disturbance and shall be installed as close to the work area as possible. Erosion controls shall remain in place until MassDEP approves their removal.

31. Immediately following the installation of stormwater BMPs, all inlets shall be protected by silt fence, haybale barriers and/or silt bags to filter silt from stormwater before it enters the drainage system.

32. Any fill material brought onto the site for construction of the infiltration basin must be clean fill suitable for infiltration. No fill material may be brought onto the site that contains asphalt, brick, concrete, construction debris or material classified as solid or hazardous waste. A soil textural analysis shall be conducted in both the proposed fill material and the underlying parent layer in order to determine which layer has the slowest saturated hydraulic conductivity rate. The analysis shall be submitted to MassDEP for review and approval and copied to the Andover Conservation Commission demonstrating that the fill material is appropriate to be utilized for the infiltration basin.

33. Upon installation of the infiltration basin, and prior to cover being placed over the basins, a report shall be submitted to MassDEP verifying depths and measurements of the basin as well as all invert elevations.

34. Upon completion of the project and full stabilization of all disturbed surfaces, all sedimentation barriers shall be removed from the site. Soil surfaces which are disturbed by the erosion controls shall be raked smooth by hand (if needed) and seeded with an appropriate seed mix.

35. At no time during or after construction shall fill or other materials be placed, slump into or fall beyond the limit of grading as shown on the plan. The contractor or designated Environmental Monitor shall be responsible for inspecting and maintaining all slopes and shall immediately notify the MassDEP and the Andover Conservation Commission if slumping, erosion or encroachment occurs.

36. Excess soil, rock and debris excavated or generated during the course of this project shall be removed from the site and disposed of in a legal manner. Records as to the destination of all materials, including excess fill and loam, to be removed from the site shall be kept on file and shall be provided to the MassDEP and the Andover Conservation Commission upon request.

37. Storing, servicing or cleaning of equipment, including but not limited to fueling, changing, adding or applying lubricants or hydraulic fluids, or washing/rinsing of trucks or equipment, shall be performed outside the 100-foot buffer zone.

38. During work on this project, there shall be no discharge or spillage of fuel, oil or other pollutants, including sediments, onto any part of the site. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident or vandalism.

39. All stormwater structures shall be managed and maintained in accordance with the project's Operation and Maintenance Plan contained within the Stormwater Pollution Prevention Plan (referenced in Condition #20) and the conditions contained in this Superseding Order. This Condition shall remain in effect in perpetuity and shall be recorded on the Certificate of Compliance.

40. Upon completion of the project, the applicant shall request a Certificate of Compliance from the MassDEP and shall submit the following information with the request:

a) A written statement by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts certifying compliance with the approved plans referenced above and this Superseding Order of Conditions and setting forth deviations, if any exist;

b) An as-built site plan prepared by a registered land surveyor or registered professional engineer showing location and grades of the project, including but not limited to: Structures, driveways, subdivision roadway, landscaping, stormwater BMPs, and site grading.



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Matthew A. Beaton
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1081
<http://www.mass.gov/eea>

February 8, 2019

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
ENVIRONMENTAL NOTIFICATION FORM

PROJECT NAME : Frederick Drive Subdivision Modification
PROJECT MUNICIPALITY : Andover
PROJECT WATERSHED : Shawsheen/Ipswich River
EEA NUMBER : 15967
PROJECT PROPONENT : Mark and Phillip W. D'Annolfo
DATE NOTICED IN MONITOR : January 9, 2019

Pursuant to the Massachusetts Environmental Policy Act (MEPA; M.G. L. c. 30, ss. 61-62I) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I hereby determine that this project **does not require** an Environmental Impact Report (EIR).

Project Description

The project includes construction of a 6-lot residential subdivision, a 1,050-linear foot (lf) extension of Frederick Drive, associated grading, and installation of utilities and stormwater management infrastructure. A cul-de-sac will be constructed at the end of Frederick Drive on land owned by the Town of Andover (Town). The construction of the cul-de-sac will require an access easement (13,947 square feet (sf)) and grading license (23,192 sf).¹ The Town has an easement to access its property through the subdivision via Frederick Drive.

¹ The land is held for municipal purposes, not conservation purposes. The Town (Andover School Committee) is not planning to develop the site in the near future (e-mail from Paul Szymanski, Assistant Superintendent for Finance and Administration, dated January 28, 2019).

Project Site

The approximately 11-acre site includes a residential structure and driveway and portions of municipally owned land. The project site is bounded by residential areas to the west and south, Route 125 to the east and undeveloped land owned by the Town to the north. Wetland resource areas include Bordering Vegetated Wetlands (BVW) and Isolated Vegetated Wetlands (IVW). A residential subdivision was first approved in the late 1950's and site work for the subdivision road was started and then suspended. Portions of the area excavated for the roadway developed into IVW. The Proponent proposes that the roadway be constructed in the same general location of the original project. The project site is not located in Priority and/or Estimated Habitat as mapped by the Division of Fisheries and Wildlife's (DFW) Natural Heritage and Endangered Species Program (NHESP) or an Area of Critical Environmental Concern (ACEC).

Environmental Impacts and Mitigation

As described in the ENF, potential environmental impacts associated with the residential development project include: alteration of 8.8 acres of land (including creation of 1.64 acres of impervious area), generation of 60 new unadjusted average daily trips (adt), generation of 3,300 gallons per day (gpd) of wastewater, and increase in demand of 945 gpd of domestic water. The project will permanently alter 18,816 sf of IVW.

Measures to avoid, minimize, and mitigate Damage to the Environment include: wetland replication (19,315 sf), installation of a stormwater management system and implementation of construction Best Management Practices (BMPs).

Jurisdiction and Permitting

The project is undergoing MEPA review and is subject to preparation of an ENF pursuant to Section 11.03(3)(b)(d) of the MEPA regulations because it will alter greater than 5,000 sf of IVW. The project requires a 401 Water Quality Certificate (WQC) and a Superseding Order of Conditions (SOC) from the Massachusetts Department of Environmental Protection (MassDEP).

The project will require a National Pollutant Discharge Elimination System (NPDES) Construction General Permit from the U.S. Environmental Protection Agency (EPA) and is required to submit a Pre-Construction Notification to the U.S. Army Corps of Engineers (ACOE) seeking authorization under the General Permits for Massachusetts in accordance with Section 404 of the federal Clean Water Act.

Because the Proponent is not seeking Financial Assistance from the Commonwealth for the project, MEPA jurisdiction extends to those aspects of the project that are within the subject matter of required or potentially required State Agency Actions and that may cause Damage to the Environment as defined in the MEPA regulations. In this case, MEPA jurisdiction extends to land alteration, wetlands/stormwater, and water quality.

Review of the ENF

The ENF generally described the project components, impacts, and mitigation measures at a conceptual level. The Proponent provided supplemental information regarding project alternatives and surrounding land uses to facilitate MEPA review. For purposes of clarity, all supplemental information provided by the Proponent is referred to herein as the ENF unless otherwise referenced.

Alternatives Analysis

As described in the ENF, the Proponent evaluated the following alternatives: No Action Alternative, a Roadway Redesign Alternative, a Cluster Development Alternative and the Preferred Alternative as described above. According to the ENF, the No-Action Alternative was dismissed as it would not achieve the project purpose of constructing a residential subdivision and the parcel of land owned by the Town located at the end of the proposed access drive would continue to be land-locked. The Roadway Redesign Alternative would shift the proposed roadway to the north to reduce impacts to IVW by 5,415 sf. However, the proposed driveway crossings necessary to access the residential lots on the north side of the road would segment the wetlands. Additionally, the wetlands would be located directly adjacent to the roadway and in the front yards of three of the lots. A Cluster Development Alternative would require a Special Permit from the Planning Board and would allow the roadway to be shortened by 240 lf. However, this would prevent the road from extending access to the Town's parcel of land and therefore was dismissed as a viable alternative. According to the ENF, the Preferred Alternative includes construction of the roadway in the previously disturbed area, will preserve the economic viability of the project and will provide access to the Town's property.

Land Alteration, Wetlands, Water Quality

As described in the ENF, the project will impact IVW and includes work within the buffer zone to BVW and IVW. The project is proposing to replicate approximately 19,315 sf of IVW. In addition to the replication area, an approximately 7,459 sf mowed lawn area identified as IVW will be enhanced with wetland plantings and allowed to fully and completely revegetate. On February 5, 2018, the Andover Conservation Commission issued an Order of Conditions denying the project. The Proponent filed an appeal on February 14, 2018 with MassDEP. A SOC was issued by MassDEP on November 5, 2018. The SOC was revoked on November 16, 2019 due to the failure of the Proponent to distribute updated plans to the Andover Conservation Commission. MassDEP will provide the Andover Conservation Commission with an opportunity to review and comment on the most recent version of the project and once again review the project for its consistency with the Wetlands Protection Act (WPA), the Wetlands Regulations (310 CMR 10.00), and associated performance standards, including the Stormwater Management Standards (SMS). According to the ENF, the stormwater management system was designed to comply with the SMS and incorporates the following BMPs: deep-sump catch basins, sediment forebays, and infiltration basins and roof runoff infiltration systems.

The project requires a 401 WQC from MassDEP. A comprehensive alternatives analysis will be required during the WQC permitting process to demonstrate that the Proponent has taken

all steps to avoid, minimize, and mitigate potential adverse impacts and that there is not a practicable alternative that would have less impact on wetland resource areas.

Construction Period


The project must comply with MassDEP Solid Waste and Air Pollution Control regulations, pursuant to M.G.L. c.40, s.54 during construction. All construction should be undertaken in compliance with the conditions of all State and local permits. The project will provide BMPs to control erosion and sedimentation during the construction period. The project will require the preparation of a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the NPDES CGP. The Proponent should evaluate measures to avoid, minimize, and mitigate construction period impacts (including but not limited to land disturbance, noise, dust, odor, nuisance, vehicle emissions, and construction-related traffic). I encourage the Proponent to select project contractors that use construction equipment with engines manufactured to Tier 4 federal emission standards or retrofitted with the best available after-engine control technology (BACT), or use alternative fuels to reduce emissions of VOCs, carbon monoxide (CO) and particulate matter (PM) from diesel-powered equipment. Off-road vehicles are required to use ultra-low sulfur diesel fuel (ULSD).

Conclusion

The ENF has sufficiently defined the nature and general elements of the project for the purposes of MEPA review and demonstrated that the project's environmental impacts will be avoided, minimized, and/or mitigated to the extent practicable. Based on review of the ENF and comments received, and in consultation with State Agencies, I have determined that no further MEPA review is required.

February 8, 2019

Date



Matthew A. Beaton

Comments received:

01/24/2019	Andover Conservation Commission (1)
01/28/2019	Johnson and Borsnstein on behalf of the Proponent
01/28/2019	Paul P. Szymanski – Assistant Superintendent for Finance and Administration for Andover Public Schools
01/28/2019	Urbelis & Fieldsteel, LLP on behalf of the Town (1)
01/28/2019	Urbelis & Fieldsteel, LLP on behalf of the Town (2)
01/29/2019	Andover Conservation Commission (2)

MAB/EFF/eff

February 19, 2019

Dear members of the Conservation Commission:

I am writing to you to let you know what I believe has turned into a very difficult process in the approval of our 6-lot Frederick Drive subdivision, bring the full Commission up to date, and ask for your help. The Conservation Commission approval process has been going on for over four years now. We have received permits/approvals from the Selectmen, School Committee, MEPA/Executive Office of Energy and Environmental Affairs, and the Andover Planning Board for the subdivision. These groups have been very thorough, but quite fair in the process. As I am a permanent member of the Historic Commission for the City of Newton, I am typically on your side of the table. Newton is a city with over 90,000 residents where we routinely oversee small to very large projects. My Commission frequently interacts with other Commissions in the City and my neighbor is a board member of our Conservation Commission. As such, I am familiar with the permitting process. *I'm not trying to be critical, as I know how difficult your job can be, but rather ask you to remedy the situation.* This has been one of the most painful experiences my wife and I, and brother, Phillip, have gone through.

Background: Our parents lived in Andover for over 50 years. My father physically built much of our home we grew up in at 2 Frederick Drive. When our parents passed away a handful of years ago, they left the family home and property to my brother and me. My brother has lived in Andover for over 60 years and resides in the house where we were raised. My wife and I, and family, are here often to visit.

In the late 1950s our father wanted to sell some lots on the property my parents owned, got the needed permits, and with his brother's help cut trees and roughed in the road. For several reasons, my father was not able to continue the project. Because of how the road was graded, some wetland vegetation emerged over the following decades, and sections of the road became a man-made wetland – which completely dries up for much of the year. A couple of years ago our engineer was walking the road with another Andover board member and the Town representative asked where the wetland was located. Our engineer had to let him know that he was standing on it. The other area the Commission's consultant designated as a wetland was our lawn (see photo below, taken in the fall) – which my parents cut and watered every summer for over 40 years, as most homeowners do.



Issues: What we found particularly disappointing is the following:

1. Three wetland consultants independently indicated our lawn (and portions of the road) are not wetlands – including Leah Basbanes, who is the Conservation Agent for North Reading. One of the other wetland consultants was hired by a third party, and not by us. As my brother and I and friends regularly played in our yard when we were growing up, and our own children had as well when they were younger, *it is hard to accept we can no longer use our yard*. Although we dispute our lawn is a wetland and have appealed the boundaries, *all the plans submitted to the Conservation Commission, Planning Board, Selectman, School Committee, DEP and MEPA have all used the Conservation Commission wetland boundaries*.
2. When the Conservation Commission issued its denial in February 2018, it was primarily over engineering issues (ability to use fill under a basin, etc.) and NOT wetland issues. The decision was appealed to the MassDEP, as the Andover Planning Board approved our plan in August 2017, using the same engineering consultant as the Conservation Commission. However, in the Commission's denial, there were other issues, such as replicating the buffer zones, that were given for the denial. In the many, many meetings of the project teams and consultants, and the reviews by the Town consultants, and Conservation Commission meetings, these issues never once came up. *Had they come up over the two plus year review process, we would have been happy to address them*.
3. With modest modifications to the plan *that was designed in consultation with the DEP*, the DEP issued a Superseding Order (SOC) on November 2018. The DEP gave the Commission additional time to submit comments on the modifications and then stated it would hold the order until the MEPA process was complete. We received the MEPA certificate last week. When the DEP overruled the Commission, things with the Commission became extremely difficult and atypical of what I have experienced, and I'm not sure why. If someone at our Newton Commission wants to appeal a decision, we help the applicant by explaining the process, how it works and readily accept the results of the appeal. This has not happened in our case, noting the following:
 - a. When the DEP issued their SOC, the Town Counsel (see November 29, 2018 e-mail) demanded we remove it from the DEP's jurisdiction and return it to the Commission. This is inherently unfair and not how I have ever seen the process work. After the SOC is issued, the applicants then return to the Commission to reconcile the modest revision to the plans generated through the SOC process with the Town's Bylaw requirements – as we had always expected to do. *As such, we declined to remove the DEP from the process, but said we would be happy to make our engineer available to the Commission and your consultants, voluntarily offered the Conservation Commission additional time to review and comment on the DEP decision, and stated we would come before the commission after the SOC was finalized by the DEP*.
 - b. When we were going through the MEPA process, an inaccurate letter was written to MEPA, most of which had nothing to do with the MEPA certification/process. Attached

is our attorney's response which corrected the inaccuracies. *At the end of the site walkthrough on January 25, 2019, it very much appeared the Town's consultants and others representing the Town were trying to come up with reasons to invalidate the project, rather than work with us toward the goal of approval.*

- c. When the Town's engineering consultant reviewed the plan with the minor modifications, Mr. MacRitchie brought up multiple issues, such as easements, that in many, many reviews and countless meeting over two plus years he had never raised before. *If these were legitimate issues, then they should have been discussed during the original review process.*
- d. To date, we have paid over \$30,000 in consulting fees to the Commission's consultants and have made all the changes they have asked. *These consultants have now demanded an additional \$18,000 in consulting fees to review the minor revisions to the plans, which we believe is unwarranted.* The plans turned into the DEP reflect a modest reconfiguration of the stormwater basin and certain wetland replication areas. Again, all minor modifications were done in consultation with the DEP, who are the State's experts in these areas. The DEP's Northeast Regional office alone employs a total of 38 Engineers and 41 Analysts, of which 20 Engineers and 15 Analysts are focused solely on wetland design and evaluation.
- e. To put it into perspective, the planning board, who used the same engineering consultant (MacRitchie) as the Commission, required us to pay \$4,650 in consulting fees over more than a year span, which involved multiple consultants' meetings, reports and reviews of the *full* engineering plans. Mr. MacRitchie now requires \$5,000 to review minor modifications. In his December 31, 2018 letter, he stated he *already* "conducted a review of the revised portion" of the DEP documents, and turned in a report.
- f. LEC is demanding an additional \$9,500 to review the modest modifications and specifically stated, "This (\$9,500) budget is not a not-to-exceed amount." The modest changes made to the replication areas are simply shifting approximately 1200 sf from the large replication area to the smaller replication area behind our home. The wetland replication design is virtually identical and the design/plantings/grading/etc. has not changed. In the Commission's denial, it indicated that the small replication area was under 5,000 sf and therefore not under its jurisdiction. By shifting the 1,200 sf to the smaller replication area, it is now over 5,000 square feet and now under the Commission's jurisdiction. We thought the Commission would be happy with the change. The \$9,500 LEC is demanding, just to review this modest revision, is more than we paid our very experienced wetland consultant, who has been before the Commission before, to assess and grade the entire wetlands and write a detailed report, review the hydrology, design the replication areas from scratch, make multiple revisions requested by LEC, write multiple additional reports, attend multiple site visits, informal meetings with the consultants, and Commission meetings, among other things. *This is not appropriate.*

We have absolutely no problem in paying "reasonable fees" but these are not reasonable fees. The Town Counsel stated the "unused fees are refundable." But we have never received any money back and the Town's consultants always demand more and more money.

We continue to believe this is a good project that has been reviewed more thoroughly than anything I have ever seen, noting the following:

1. *The engineering has been reviewed and approved by both the Planning Board, who used the same consultant as the Conservation Commission, and DEP in its SOC, who stated it conforms to DEP guidelines.* We intend to go before the Planning Board to reconcile the minor modifications in engineering done in consultation with the DEP, and then go before the Conservation Commission. Under the DEP Stormwater Guidelines, a small subdivision (under 9 lots) is supposed to be allowed compliance to the "maximum extent practical." We have been required to strictly comply with all DEP guidelines.
2. The wetlands replication areas have been designed by Bob Prokop, who teaches wetland science at UNH, *in very close consultation with LEC.* Where the man-made wetlands in the road are of a very low quality (see Mr. Prokop's report) and completely dry up for much of the year, the replicated wetlands are designed to be below the water table (excavated and graded to a low elevation), have wildlife habitat areas, and will be of a much higher quality. The wetlands in the road would be replicated on site greater than 1:1 and the 7,459 square feet of our existing lawn would be materially enhanced with wetland vegetation. *The Conservation Commission's denial of the project was not based on any deficiency in the proposed wetland replication and enhancements.* My wife and I are avid environmentalists. We did not cut corners on this project.
3. We tried to be good neighbors and *voluntarily extended all the utilities well past where we were required to and into the Town's property, so the Town would have two buildable and valuable lots at zero development cost to the Town.* The Selectmen, School Committee and Planning Board all seemed very pleased we were doing this. The School Committee recently affirmed that it is not abandoning its access rights to the Town's property. The Town's ability to access its property is solely through the proposed development of the existing road location.

We are asking for help from the Commission on several items:

1. **We'll be approaching \$50,000 in Conservation Commission consulting fees, which is a great deal of money to us. We're asking that you work in cooperation with us to choose new civil engineering and wetlands peer review consultants that are reasonable and fair minded. And as the Planning Board has done in the past, please limit the consultant's reviews to the specific modifications presented to the DEP. Based on my experience in Newton and speaking with other professionals, this should be several thousand dollars at most.**

2. The Selectmen, School Committee and Planning Board seem to have similar thoughts on our project, which is different from what you may be seeking. So please meet (as we often do with our Newton Commissions) and tell us what you want us to do for approval. Over several years we made all the changes the consultants requested. When you asked us for alternate locations for the stormwater basin and wetland replication areas, we did so and pursued the design alternative we believed the Commission favored. At our Newton Commissions, if we don't like something, we provide the applicants with suggested alternatives that would pass approval. So please let us know what you want from us to approve the project. That's all we are asking for.

Thank you for your time and consideration.

Regards,

F. Mark D'Amico, Marguerite D'Annolfo, Phil D'Annolfo

Mark/Marguerite and Phillip D'Annolfo

CC: Andrew Flanagan, Town Manager

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Lianne Patenaude
Ellen M. Melvin
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January 28, 2019

Via FedEx and Email: deidre.buckley@mass.gov

Secretary of Energy and Environmental Affairs
Attn: MEPA Office
Deirdre Buckley, Director
100 Cambridge St. – 9th Floor
Boston, MA 02202

Re: Response to Comment Letter of Andover Conservation Commission dated
January 24, 2019 (“Comment Letter”)
Frederick Drive Subdivision Modification, Andover, MA

Dear Ms. Buckley:

I represent Mark and Phil D’Annolfo, owners of a portion of the Frederick Drive Subdivision property and proponents of the Environmental Notification Form (“ENF”) currently pending with the MEPA office for the modification of the Frederick Drive Subdivision. This letter will respond to the purported comments of the Andover Conservation Commission as reflected in the Commission’s Comment Letter. This letter is not intended as a comprehensive response to the various engineering design comments and unrelated legal issues raised in the Comment Letter, which appear to have limited relevance to the MEPA process.¹ However, several material mischaracterizations in the Comment Letter require the following brief response:

1. Although the Proponents have and continue to appeal the wetlands delineation made by the Commission under the Town of Andover’s Wetlands Protection Bylaw, all subsequent filings, including the Proponents’ Notice of Intent and their Request for Superseding Order of Conditions currently pending with the

¹ To the extent you desire additional information from the Proponents on those issues, I would be happy to provide a further response.

Secretary of Energy and Environmental Affairs
Attn. MEPA Office
Deirdre Buckley, Director
January 28, 2019
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MA Department of Environmental Protection ("DEP") reflect the wetlands delineation as determined by the Commission. More relevantly, it is the wetlands delineation approved by the Commission that is reflected in the ENF and related materials. Although the Proponents dispute the Commission's delineation, based on the opinions of two other qualified wetlands scientists, and have recently filed an appeal of the ruling of the Superior Court, they have accepted and incorporated the Commission's approved delineation in the plans originally filed with the Commission and now pending with the MEPA Office and the DEP. It is unclear why the Commission has highlighted the fact that the Proponents continue to dispute the Commission's delineation in a parallel and unrelated proceeding that is now before the courts. Also, it should be noted that the Proponents agreed-with and did not appeal the Commission's Order of Resource Area Determination delineating wetland resource areas under the MA Wetlands Protection Act.

2. At several points in its letter, the Commission seems to complain of the fact that it received the ENF materials on January 9, 2019. All of the ENF materials, including limited supplemental materials, were timely sent to the Commission and the balance of the distribution list simultaneously, with all materials sent to the Commission by January 7, 2019. There is nothing delayed or unusual about the Commission receiving those materials two days later, on January 9, 2019. As notice of the ENF was published in the Environmental Monitor on the same day, January 9, 2019, the Commission has been in receipt of all of the submitted materials and has had the full benefit of the entire, 20-day MEPA comment period.
3. The Commission never previously requested the Proponent to propose alternative locations for the Frederick Drive roadway. Many plan revisions were requested, made, and reviewed by the Commission and its various, outside consultants over the course of the Commission's 18-month long hearing process on the Proponents' Notices of Intent. The Commission was presented with two alternative plans for the location of the project's stormwater detention basin and wetlands replication areas, and the Proponents pursued the alternative preferred by the Commission and its consultants. However, until its Comment Letter of January 24, 2019, the Commission never requested changes in the location of the roadway or consideration of alternatives to the previously approved roadway location, despite the many rounds of plan changes accommodated by the Proponents and the many hearing sessions conducted by the Commission.

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4. To the extent the Commission has now suggested that alternatives should be considered that would reduce the length of the subdivision roadway or materially change its location, that suggestion must be considered in light of its impact to municipally owned land at the cul de sac end of Frederick Drive. The Town of Andover holds title to this land for municipal purposes and not as conservation land. The only practical access to this land is through the construction of the full length of Frederick Drive. Improvement of practical access to the Town's land is an important aspect of the purpose of the proposed project. Both the Andover Board of Selectmen and Andover School Committee have voted to grant temporary grading and construction licenses to the Proponents to facilitate the construction of the full length of the roadway. Any alternative that would not extend the subdivision roadway its entire length, in order to provide access to the Town's land, should not be required for consideration unless the Andover Board of Selectmen and Andover School Committee have confirmed that they are abandoning the Town's rights over the subdivision roadway.
5. The DEP previously issued a Superseding Order of Conditions ("SOOC") approving the Proponents' project with certain, minor changes to the plans rejected by the Commission. A copy of the SOOC is attached. It is the Proponents understanding that the SOOC has been retracted and is now temporarily withheld by the DEP, pending completion of the MEPA process. The DEP set a deadline of December 7, 2018, for the Commission's submission of comments on the SOOC. The Commission submitted comments to the DEP on that date. The Commission also submitted additional materials to the DEP on January 2 and January 3, 2019. There is no reason to believe that the DEP's re-issuance of the SOOC is pending the Commission providing even more additional comments, as suggested in the Commission's Comment Letter.
6. The Commission complains at several points in its Comment Letter that it has not had an opportunity to hold a public hearing to consider the changes to the project plans made at the request of the DEP during the course of the SOOC process. However, the Proponents' voluntary offer to return to the Commission for that purpose was rejected by the Commission through its legal counsel. When the voluntary offer to return to the Commission was rejected, the Proponents affirmatively moved the Superior Court to order that the Proponents' appeal of the Commission's municipal bylaw decision be formally remanded to the Commission for consideration of the DEP's SOOC and the changes to the Proponent's plans that resulted from the SOOC process. The Commission partly opposed that motion. Nevertheless, the

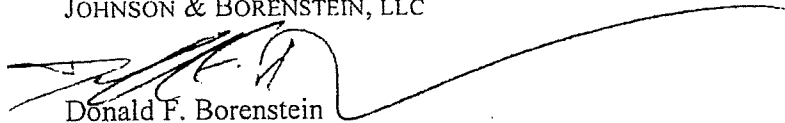
Secretary of Energy and Environmental Affairs
Attn. MEPA Office
Deirdre Buckley, Director
January 28, 2019
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Court allowed the Proponents' motion by order docketed January 23, 2019, and has remanded the matter for the Commission's consideration of the changes to the plans and of the DEP's SOOC, by March 1, 2019.

7. The Conservation Commission has suggested that the "no action alternative" is not unreasonable or inequitable. However, the Commission's position in this regard ignores that under the no action alternative there would be no benefit from the 7,459 square feet of resource area enhancement proposed for wetland series E, which is currently used as a side lawn for the existing dwelling. In the Preferred Alternative, this area would be materially enhanced with wetland vegetation and allowed to naturally revegetate. Additionally, the replicated wetland areas designed by the Proponents' wetland biologist, in consultation with the Commission's consultants, would also not be constructed, which has been designed to be of higher wetland functionality than what was accidentally created when work on the subdivision roadway was left incomplete. Finally, under the no-action alternative, the property owned by the Town of Andover would remain land-locked and practically inaccessible.

Thank you for your consideration.

Very truly yours,
JOHNSON & BORENSTEIN, LLC



Donald F. Borenstein

DFB/mf

Cc: Mark D'Annolfo *Via Email*
Phillip W. D'Annolfo *Via Email*
Robert Douglas, Director, Andover CC *Via 1st Class Mail & Email: rdouglas@andoverma.gov*
Carol McGravey, Esq. *Via 1st Class Mail & Email: chm@uf-law.com*
David A. Griecci, P.E., Andover Consultants *Via Email: dgriecci@andoverconsultants.com*
Robert Prokopf, Wetland Consulting Services *Via Email: wcsbobb@aol.com*
Erin Flaherty, MEPA Office *Via Email: erin.flaherty@mass.gov*

To: Andrew Flanagan, Town Manager; Board of Selectman and Conservation Commission

From: Robert Douglas, Director of Conservation

Date: February 12, 2019

Re: Frederick Drive Appeal

I just wanted to send you a quick note about Don Borenstein's Appeal of the Andover Conservation Commission's selection of consultants related to a Notice of Intent filing on Frederick Drive. The appeal document is attached.

It is important to know that the proposed Frederick Drive subdivision will not be constructed at the edge or buffer of a wetland, but portions of it will actually fill and destroy an existing jurisdictional wetland. Additionally, the plan reflects the proponent's apparent desire to maximize the number of house lots and reduce the size of the stormwater treatment areas to a size that is less than needed to make them fit into the remaining area of the site. The filling of a wetland resource area in Andover of this scale is fairly rare. (In recent memory the widening of the State roadway at Dascomb Road and the construction of the Bancroft School are the only examples which come to mind). Furthermore, the site is problematic. Soils on the property do not drain well, some of which contain fill.

The project as proposed and submitted did not have the information the Commission needed to make a decision. Our peer reviewer was constantly in the position of having to react to new plans as the owner changed the design, and even the revised plans did not contain all of the needed information. The constant revisions of the plan have taken up a large amount of the Conservation Commission's time, and that of our peer review consultants. Each time we receive a new plan - every individual sheet and calculation must be scrutinized - as the changes are often not clearly expressed. Each time a new plan set is reviewed, the peer review consultants need to carefully document these changes in a new report and provide their findings to the Conservation Commission in an open session meeting. The Commission takes its job seriously and is interested in assuring that the environment is protected as well as the residents that live in the subdivision long after the site developers have left the scene.

While there are many quite unusual incidents related to this filing, I'll refer to the most relevant at the moment. In the fall the Conservation Commission issued a denial for the project and the Applicant appealed the denial to DEP. The Applicants - as part of the appeal - sent a significantly revised plan set, dated September 12, 2018 to DEP to have DEP issue a Superseding Order of Conditions. This revised plan set, was never sent to the Conservation Commission, Town Counsel or our peer review consultants for review prior to the appeal. Since DEP did not receive any comments from us about the new plans, DEP issued a Superseding Order of Conditions of project approval based on this plan set dated September 12, 2018. As soon as DEP was informed that we did not receive the new plans, DEP immediately revoked the Superseding Order.

The Applicant also appealed the denial under our local By-Law to Superior Court. Superior Court remanded the project back to the Conservation Commission for review, which includes a review of the significantly revised plan set (dated September 12, 2018) by the Conservation Commission's peer review consultants.

Contrary to regular procedures, this new plan has never been seen in a public setting by the Commission, nor had the 'sunshine' of a public meeting or hearing. It is critical that this review must

take place, and that the Commission can make informed decisions about it. Attorney Borenstein's appeal to the Board of Selectmen is an attempt to avoid a review of their controversial plan by refusing to pay the required fee for peer reviews.

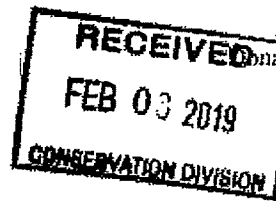
Furthermore, these particular peer review consultants have been working on this project since December, 2014. If the proponents truly believe there is a conflict of interest and the consultants are not qualified to conduct the peer reviews, it is bewildering to me why an appeal was not filed by the Applicant's representative sooner

It must be noted that the Conservation Commission's peer review consultants are top professionals in their fields, hold professional certifications to that effect, and have served as expert witnesses in many capacities. The Commission and Staff need their input in order to make informed decisions about the project. Under the Massachusetts Wetlands Protection Act and our Town Wetlands Protection By-law, the Commission is allowed to retain peer review consultants to provide expert advice to town boards. Our consultants have no *Conflict of Interest* that I am aware of, and they are all qualified professionals.

Lastly, I feel portions of this new plan may be dangerous. Our peer review consultants are critical of the design and lack of adherence to engineering design standards in the plan. The plan includes a stormwater detention basin contained by a retaining wall that if built as planned, will hold back large quantities of water just 15 to 20-feet away from the neighbor's house. Through the findings of our engineering peer review consultant, and in conversations I have had with other engineers - including our Town Engineer - there have been some serious questions raised. Should this retaining wall fail there would be damage to the wetlands and major consequences to down gradient properties. We have specifically retained the firm Milone & MacBroom for their expertise in this matter. (This Engineering firm recently served as the advisor on the reconstruction of the large dam at Field Pond in Harold Parker State Park.) In a letter to the commission (1/22/2019) Milone & MacBroom stated that the submitted Frederick Drive plans were not adequate and concluded that, *"Essentially, we cannot proceed further with a detailed structural review until we receive more design information for the proposed retaining wall."*

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Via Certified Mail
RRR #7017 2400 0001 0379 6915

February 4, 2019

Alexander J. Vispoli, Chair
Andover Board of Selectmen
Town of Andover
36 Bartlet Street
Andover, MA 01810

Re: Appeal of Conservation Commission selection of consultants
Mass.Gen.Laws ch.44, §53G
Andover Conservation Commission Rule and Regulation Adopted May 2, 2006

Dear Chairperson Vispoli and Members of the Board of Selectmen:

I represent D. Mark D'Annolfo and Phillip D'Annolfo, owners of land located off of Rocky Hill Road. The D'Annolfo's property includes all of the Frederick Drive Subdivision, excluding the portion previously acquired by the Town. As you may recall, the Inhabitants of the Town of Andover hold title to the balance of the land in the Frederick Drive Subdivision located at the end of the (unconstructed) cul de sac roadway.

This letter is my clients' appeal, pursuant to Mass.Gen.Laws, ch. 44, §53G and Conservation Commission Rule and Regulation dated May 2, 2006, of the Conservation Commission's selection of consultants in connection with my clients' proposed modification of the Frederick Drive Subdivision project. A copy of the Commission's May 2, 2006 Rule and Regulation is attached hereto for your reference. My clients have already paid in excess of \$30,000 to consultants selected by the Conservation Commission in connection with the Commission's most recent prior review of their proposed modification. In connection with an upcoming proceeding before the Commission, concerning certain additional changes to the project, the Commission has recently selected three, so-called "peer review" consultants. Those three consultants have

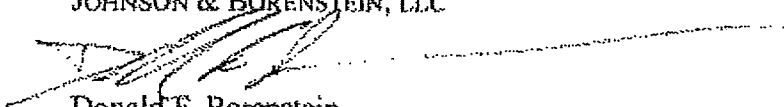
Alexander J. Vispoli, Chair
Andover Board of Selectmen
February 4, 2019
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proposed an initial, combined budget of an additional amount of \$18,000. My clients' appeal the Commission's selection of these consultants is based on potential conflicts of interest and on their qualifications. A copy of the consultant's proposals are attached for your reference.

It is requested that this matter be placed on the meeting agenda of February 25, 2019, for the Board's consideration. I will expect to attend with my client.

Thank you for your cooperation in this regard.

Very truly yours,
JOHNSON & BORENSTEIN, LLC



Donald F. Borenstein

DFB/mf
Enclosure

Cc: Andover Conservation Commission, c/o Robert Douglas ✓
Thomas J. Urbelis, Esq.
Andover Consultants, Inc.
D. Mark D'Annolfo
Phillip D'Annolfo

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THOMAS J. URBELIS
e-mail tju@uf-law.com

February 21, 2019

Telephone 617-338-2200
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Board of Selectmen
Andover Town Offices
36 Bartlet Street
Andover, MA 01810

RE: FREDERICK DRIVE

Dear Members:

INTRODUCTION

This appeal results from the developer filing a totally new set of subdivision plans with the Department of Environmental Protection during an appeal to the DEP of the Conservation Commission's denial of their project, and asking the DEP to reverse the Commission's decision and approve those plans, all without providing a copy of those plans to the Commission for peer review, a public hearing, and comment to the DEP.

The developer now wants this Board to reject the peer reviewers selected by the Commission to review and comment upon those new plans at a public hearing.

ISSUE

In this Appeal Did the Developers Carry Their Burden to Prove that the Conservation Commission's Peer Reviewers Lack the Required Qualifications or Have a Conflict of Interest?

The Board is being asked to determine whether peer reviewers selected by the Commission should be disqualified. As discussed below, pursuant to state law, this Board has a very limited jurisdiction with regard to this appeal and the only grounds for this

appeal are the peer reviewers' lack of required qualifications or a conflict of interest. The developer has the burden to prove that to you.

**A SUPERIOR COURT ORDERED REMAND REQUIRES THE
D'ANNOLFOS TO PAY CONSERVATION COMMISSION PEER REVIEW FEES**

Attorney Donald Borenstein has filed a February 4, 2019 and February 15, 2019 appeal to you objecting to the Conservation Commission's selection of peer reviewers and to the peer reviewers' fees for the Frederick Drive subdivision project. On February 12 Robert Douglas, Director of Conservation, submitted a memorandum to you describing the history and problems with this project from the Conservation Commission standpoint.

Currently there are two lawsuits pending against the Conservation Commission relating to this project. This appeal to this Board relates to a second lawsuit (to be described below) filed by Mark and Phillip D'Annolfo relating to the proposed Frederick Drive Subdivision.

The first lawsuit, in which the Town of Andover is also a Defendant, challenged the Andover Conservation Commission's delineation of wetlands on the property and the payment of peer reviewer fees. In 2015 the Commission hired LEC Environmental to evaluate and delineate the wetlands. That is the same firm that the Commission wants to use now and which is the subject of the appeal before you. The D'Annolfos did not object to that firm being hired as a peer reviewer in 2015. LEC Environmental disagreed with the D'Annolfos' consultant as to the wetlands delineation. The D'Annolfos filed a Superior Court appeal of the Commission's decision to adopt the delineation as described by LEC Environmental and also challenged the payment of LEC Environmental's fees. On December 26, 2018 the Superior Court ordered that the Conservation Commission's motion for judgment on the pleadings be allowed, thus affirming the Commission's wetlands delineation as described by LEC Environmental. At that time I

supplied you with a copy of that 24 page decision.¹ Attorney Borenstein has filed a Notice of Appeal of that Court decision to the Massachusetts Appeals Court and that appeal is pending.

The second pending lawsuit relates to the D'Annolfos' challenge to a February 5, 2018 Order of Conditions (OOC) issued by the Commission denying approval of the D'Annolfos intended work within a buffer zone to wetland resource areas. Once again LEC Environmental was hired as a peer reviewer with no objection by the D'Annolfos. Professional Engineer Daniel MacRitchie was hired by the Commission with no objection by the D'Annolfos. The D'Annolfos appealed to the Department of Environmental Protection (DEP) for a Superseding Order of Conditions (SOOC) under the state Wetlands Protection Act and to the Superior Court for review of the OOC under the Town's Wetland Bylaw,² and those appeals to DEP and to Superior Court are pending. There was no appeal by the D'Annolfos to you or anyone else of any of the peer reviewers selected by the Commission.

In violation of the DEP rules as well as basic principles of equity and fair play, on or about September 19, 2018 the D'Annolfos' representative presented the following to the DEP, but not to the Commission:

- "1. The Subdivision Modification Plan, Frederick Drive (fka Frederick Street), Andover, Massachusetts, prepared by Andover Consultants (the "plans"), which include"
- | | |
|--------------|---|
| Sheet 1 of 9 | Cover Sheet, revised September 12, 2018 |
| Sheet 2 of 9 | Site Grading and Utility Plan, revised September 12, 2018 |
| Sheet 3 of 9 | Site Utility and Profile Plan, revised September 12, 2018 |

¹ The D'Annolfos asked the Court to order the return of LEC Environmental's fees that were paid by the D'Annolfos. In a footnote the Court stated:

"The court will dismiss without discussion so much of the amended complaint that asks the court to adjudicate the billing dispute between the parties."

Thus, in the 24 page decision, the Court did not deem the D'Annolfos' claim regarding the fees worthy of discussion and dismissed the claim outright.

² There was no claim challenging the payment of peer reviewer fees.

Sheet 4 of 9 Roadway Grading Plan, revised September 12, 2018
Sheet 5 of 9 ESC Plan, revised September 12, 2018
Sheet 6 of 9 Construction Details Plan, revised September 12, 2018
Sheet 7 of 9 Wetland Replication Plan, revised September 12, 2018
Sheet 8 of 9 Drainage Details, revised September 12, 2018
Sheet 9 of 9 Existing Conditions Plan, dated March 7, 2017

2. The Stormwater Management Report, Frederick Drive, Andover, Massachusetts, Dated May 26, 2017, revised through September 12, 2018, prepared by Andover Consultants, Inc.
3. A Storm Water Pollution Prevention Plan (SWPPP) dated September 12, 2018, prepared by Andover Consultants, Inc.”

Those plans included, for the first time, a retaining wall which substantially changed the project which the Commission voted upon, and with no response from the Commission because the Commission had not seen the plans, the DEP issued a Superseding Order of Conditions of approval based upon those substituted plans.

What was not described in Attorney Borenstein’s correspondence to you is that the DEP Superseding Order was revoked by the DEP because the Superseding Order was based upon these documents and the documents were never given to the Commission, in violation of DEP rules, and a specific directive by DEP.

Attorney Borenstein’s February 15, 2019 correspondence is replete with references to a DEP Superseding Order of Conditions allowing the project and attaches as Exhibit D thereto the November 5, 2018 letter from the DEP which enclosed the SOC approving the project and which specifically referenced the plans submitted to DEP on September 19, 2018. However, what was not attached to Attorney Borenstein’s letter was the November 16, 2018 letter from DEP to the D’Annolfos (attached hereto as Exhibit 1) which revoked the SOC, nor did Attorney

Borenstein's letter give you the specific reason why the SOC was revoked. As stated by the DEP:

"On June 5, 2018, MassDEP issued a letter requesting additional information based on review of the information currently contained in the file and observations made at the site inspection conducted on March 3, 3016 (sic). MassDEP's letter stated that 'all information submitted to MassDEP must at the same time be sent to all other parties to the appeal at the same time.' MassDEP issued a Superseding Order of Conditions on November 5, 2018. On November 14, 2018 your representative acknowledged that the information and plans submitted to MassDEP on September 19, 2018 were not submitted to the Andover Conservation Commission (the "Commission") as instructed. (emphasis supplied)

It is MassDEP's opinion that the Superseding Order of Conditions is invalid because it was not issued in accordance with the procedural requirements in the Wetlands Protection Act Regulations, 310 CMR 10.05(7)(i) which state that any party presenting information shall provide copies to all other parties."

Thus, because the developer violated DEP directives and procedural rules, the SOC was revoked and does not exist.

As described in Robert Douglas' February 12, 2019 memorandum to you attached hereto as Exhibit 2 the documents presented a subdivision which is substantially different from the subdivision which was the subject of the Commission's decisions and which is the subject of the two lawsuits.³ Those new plans show a retaining wall which is a totally different concept from what was proposed to the Commission and to the Planning Board. The Commission has never held a hearing on those documents and neither has the Planning Board. The Commission was unable to hold a hearing on the new plans or provide comments to the DEP prior to the DEP issuing its Superseding Order of Conditions. As a result of the failure to provide those plans to

³ Those plans have not been reviewed or approved by the Planning Board. Therefore, any discussion by the D'Annolfos about an "approved subdivision" is baseless because the Conservation Commission is now being asked to review a subdivision which has not been approved by the Planning Board.

the Commission, the Superior Court in the second lawsuit entered a January 16, 2019 Order of Remand that is attached hereto as Exhibit 3, ordering a hearing on those documents:

As can be seen, the Court Order which is explicit states that:

“The Plaintiffs shall pay the costs of notice, publication and the Commission’s peer review fees relating to the peer review of the foregoing documents.”

The appeal here also complains about the cost of the peer reviewers. What is not acknowledged by the developer is that this is a complicated project as described by Robert Douglas, and the peer reviewers selected by the Commission have the institutional knowledge of the project which a new peer reviewer would be required, at expense to the D’Annolfos, to obtain. The Record Appendix filed with the Court in the first Court case, in which the Commission’s decision and peer reviewer were upheld contains 1,063 pages. The Record Appendix filed with the Court in the second Court case and which is the subject matter of the appeal here contains 1,499 pages. New peer reviewers selected by the Commission would face a costly (to the D’Annolfos) endeavor to bring themselves up to speed in this complicated project. The Commission is not going to tell an expert what he or she cannot look at in reviewing this project.

In any event, the Court Order is unambiguous and controlling that the D’Annolfos must pay for peer review fees. There was no appeal taken from that Court Order. Thus, the issue of payment of peer review fees has already been decided and is not a topic which is properly in front of this Board, and as discussed below is beyond the jurisdiction of this Board.

MASSACHUSETTS LAW AND THE CONSERVATION COMMISSION’S RULES AND REGULATIONS REGARDING CONSULTANT FEES LIMIT THIS APPEAL TO CLAIMS THAT THE PEER REVIEWERS HAVE A CONFLICT OF INTEREST OR DO NOT POSSESS THE REQUIRED QUALIFICATIONS

M.G.L. Chapter 44, Section 53G authorizes a Conservation Commission to charge a developer for peer review fees and provides that a Conservation Commission may adopt Rules and Regulations which:

“...provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualification. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.” (emphasis supplied)

It is clear that under that state law the peer review fees are not within the jurisdiction of this Board and are not an allowed subject for an appeal to this Board.

Pursuant to M.G.L. ch. 44, section 53G, in 2006, the Commission adopted Rules and Regulations that are attached hereto as Exhibit 4. As you can see per the state law, the Rules and Regulations provide that the only ground of appeal to your Board is:

“limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.”

Since there is no challenge to the professional qualifications of the Commission’s peer reviewers, the only other ground is conflict of interest which is defined as:

“**conflict of interest.** A real or seeming incompatibility between one’s private interest and one’s public or fiduciary duties.” Black’s Law Dictionary, Abridged Tenth Edition.

Nothing which has been presented to you by the developer fits such a definition.

**PEER REVIEWERS HAVE A DUTY TO THE
CONSERVATION COMMISSION AND NOT TO DEVELOPERS**

The developers are in effect requesting that they have veto power over the selection of the Commission’s peer reviewers. It must be emphasized that the Conservation Commission

peer reviewers are not agents of the D'Annolfos. The contract for peer review services is signed by the Town and not by the D'Annolfos. The contract provides that the peer reviewers report to the Conservation Commission, not to the D'Annolfos. The peer reviewer task is to report to the Commission whether the developer's project is complying with appropriate laws, bylaws, rules and regulations of the state, the Commission and Andover. Their task is not to advise the D'Annolfos on the way they should design their project. Their duty is not to the D'Annolfos but to the Commission and the D'Annolfos have absolutely no right to determine who the Commission selects as peer reviewers. Pursuant to state law the funds are paid by the D'Annolfos but the client for a peer reviewer is the Conservation Commission, not the D'Annolfos.

Attached hereto as Exhibit 2 is a February 12, 2019 Memorandum from Robert Douglas, Director of Conservation and also as Exhibit 5 are the resumes, education, background and professional experience of the peer reviewers for the Frederick Drive project and who are the subject of this appeal to you. All of those peer reviewers are experts in their field and certainly qualified to perform the peer reviews.

Bob Douglas states it best when his memo said:

"It is important to know that the proposed Frederick Drive subdivision will not be constructed at the edge or buffer of a wetland, but portions of it will actually fill and destroy an existing jurisdictional wetland. Additionally, the plan reflects the proponent's apparent desire to maximize the number of house lots and reduce the size of the stormwater treatment areas to a size that is less than needed to make them fit into the remaining area of the site. The filling of a wetland resource area in Andover of this scale is fairly rare. (In recent memory the widening of the State roadway at Dascomb Road and the construction of the Bancroft School are the only examples which come to mind). Furthermore, the site is problematic. Soils on the property do not drain well, some of which contain fill."

“Contrary to regular procedures, this new plan has never been seen in a public setting by the Commission, nor had the ‘sunshine’ of a public meeting or hearing. It is critical that this review must take place, and that the Commission can make informed decisions about it. Attorney Borenstein’s appeal to the Board of Selectmen is an attempt to avoid a review of their controversial plan by refusing to pay the required fee for peer reviews.”

“Lastly, I feel portions of this new plan may be dangerous. Our peer review consultants are critical of the design and lack of adherence to engineering design standards in the plan. The plan includes a stormwater detention basin contained by a retaining wall that if built as planned, will hold back large quantities of water just 15 to 20-feet away from the neighbor’s house. Through the findings of our engineering peer review consultant, and in conversations I have had with other engineers – including our Town Engineer – there have been some serious questions raised. Should this retaining wall fail there would be damage to the wetlands and major consequences to down gradient properties. We have specifically retained the firm Milone & MacBroom for their expertise in this matter. (This Engineering firm recently served as the advisor on the reconstruction of the dam at Field Pond in Harold Parker State Park.) In a letter to the commission (1/22/2019) Milone & MacBroom stated that the submitted Frederick Drive plans were not adequate and concluded that, *‘Essentially, we cannot proceed further with a detailed structural review until we receive more design information for the proposed retaining wall.’*”

It should be emphasized that despite the Commission’s employment of the same peer reviewers since the D’Annolfos first applied to the Commission in 2014, it was not until after December 26, 2018 when the Superior Court rejected the D’Annolfos’ wetlands consultant’s delineation and affirmed the LEC Environmental delineation and dismissed the D’Annolfos’ claim regarding LEC Environmental’s fees that LEC Environmental or any other peer reviewer has been the subject of a challenge. In fact, as stated by the Superior Court in its December 26, 2018 decision at page 17:

“As there is no challenge to the qualifications of the peer reviewer, the court rules that the Commission’s acceptance and adoption of the peer reviewer’s delineations was not arbitrary, capricious, or an abuse of discretion, and were supported by substantial evidence.” (emphasis supplied)

Thus, the Court approved the Commission's peer reviewer's delineations. It is significant that there is no challenge here to the qualifications of the peer reviewers as there was none in the first Court case. Clearly, the appeal to the Board here is not a legitimate challenge to the qualifications or an alleged conflict of the Commission's peer reviewers (which qualifications were never challenged prior to the Superior Court's December 26, 2018 decision which was adverse to the D'Annolfos) but is an attempt to disqualify the Conservation Commission's peer reviewers based upon an alleged conflict due to their criticism of this subdivision project, which criticism has already been upheld by the Court in the first case. The only alleged conflict here is the alleged conflict created because the Commission's peer reviewers have had the audacity to have opinions which conflict with the developer's consultants.⁴

Furthermore, the State statute and the Commission's Rules and Regulations are clear that the amount of the peer review fees is not a proper subject for an appeal to this Board.

LEC Environmental

It is totally understandable and logical why the developers want you to disqualify LEC Environmental, whose President is Ann Marton. In the first lawsuit the Superior Court, in a 24 page decision, rejected the wetlands delineation made by the D'Annolfos consultant and affirmed the delineation made by LEC Environmental. The Court also dismissed the D'Annolfos' claim regarding LEC Environmental's peer review fees. Having their consultant's opinion, and their claim regarding LEC Environmental's fees, rejected by the Superior Court, they now want another bite at the apple by this appeal to you to disqualify the firm whose

⁴ If the developer wants to move the process along, then why are they appealing the 24 page ruling of the Superior Court relating to the wetlands delineation in the first lawsuit to the Massachusetts Appeals Court? That appeal to the Appeals Court and possibly to the Supreme Judicial Court will probably not be decided in 2019.

opinion and fees the Superior Court upheld. Again, the appeal here is not on "qualifications" but on the grounds of a phantom "conflict of interest" because LEC Environmental has criticisms of this project.

DANIEL MacRITCHIE, P.E.

Attorney Borenstein's letter criticizes Daniel MacRitchie, a Professional Engineer, because he questioned whether a new proposed retaining wall might be located too close to an abutting property in violation of the property line setback of the Town's Zoning Bylaw. That wall is considered a structure and one of the first questions any engineer, surveyor, or attorney (or perhaps a member of this Board) would ask for such a structure is whether that structure is within the setback provision of Andover's local zoning bylaw. Asking that question is an indication of Mr. MacRitchie's competence and not an indication of an alleged conflict of interest. Criticizing Mr. MacRitchie for asking such a legitimate and obvious question demonstrates the futility of the alleged "conflict of interest" argument.

Also, Attorney Borenstein's criticism of Mr. MacRitchie on page 5 of his February 15 letter refers, once again, to a Superseding Order of Conditions which has been revoked, where the letter states:

"As discussed above, MA-DEP's Superseding Order of Conditions explicitly rejected MacRitchie's interpretation of the guidelines."

The developer's reliance upon, and repeated reference to a revoked Superseding Order of Conditions which does not exist, as grounds for disqualification, demonstrates the futility of their arguments.

MICHAEL R. GAGNON, P.E.

The objection to Michael Gagnon, who is a Professional Engineer, is not on the grounds that he does not possess “required qualifications” or has a “conflict of interest” which are the only grounds upon which an appeal can be brought to this Board. The developer argues that Mr. Gagnon’s services “are not relevant.” Mr. Gagnon will do a peer review of plans and supporting documentation relative to the structural design of the proposed retaining wall.

Even though qualifications and conflict of interest are the only grounds to appeal to this Board, the developers argue to this Board they have the authority to dictate to the Conservation Commission not only which peer reviewers the Commission may select but also the authority to dictate the subject matter which a peer reviewer would be allowed to investigate. No such authority for them exists. Robert Douglas’s memo describes the safety concerns relating to the new retaining wall

A portion of the basin is in the buffer zone. The basin includes a 9-foot high embankment on the north side and a system of parallel structural walls along the western property boundary that together are intended to impound water within the basin and retain fill between the walls. The size and type of wall and the type of fill material between the walls are not specified. A 15-inch diameter drain pipe is proposed to be located between the two parallel walls at a depth of about 15 feet below the top of the upper wall and a proposed drainage manhole is located between the two walls.

No retaining wall details are included in the drawings that depict the type of wall and bottom of footing elevations. The intent of the proposed grading around the two isolated wetland replication areas is not clear. The horizontal separation distance between the two retaining walls

between the wetland replication area and stormwater basin may be an issue depending on the type of wall that is proposed.

The Commission has the obligation to review the plans for the newly proposed retaining wall with regard to the wall's capability to function as proposed and not suffer a failure such that the interest of the Wetlands Act, Wetlands Bylaw and abutting property owners are protected. Robert Douglas's memorandum lays out the concerns which the Commission has regarding this newly proposed retaining wall. A review of those concerns by a peer reviewer is certainly appropriate.

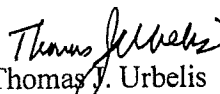
CONCLUSION

The Commission adopted Rules and Regulations regarding peer reviewers in 2006. This is the first appeal to be heard by this Board under those rules. The grounds for this appeal is not to qualifications of the Commission's peer reviewers but an alleged "conflict of interest" because those peer reviewers disagree with the developers' consultants. In one instance, the grounds are that the peer reviewer's services "are not relevant." The state statute and the Conservation Commission rules do not give developers a veto power over peer reviewers but in Attorney Borenstein's letter you are being asked to "direct the Commission to select new peer reviewers in consultation with the D'Annolfos' Project Team." (emphasis supplied) If you give these developers such a veto power, you will be setting a precedent and establishing a path for developers to appeal to this Board any time a developer objects to peer reviewers who disagree

with them. That is a very slippery slope for this Board to travel.⁵

For the foregoing reasons the D'Annolfos did not carry their burden of proof and the Board should vote to deny this appeal.

Very truly yours,


Thomas J. Urbelis

TJU/kmp
Enclosure

cc: Andrew Flanagan (w/enc)
Michael Lindstrom (w/enc)
Conservation Commission (w/enc)
Robert Douglas (w/enc)
Donald Borenstein, Esq. (w/enc)

⁵ The License Agreement with the Town as signed by the School Committee which does a favor for the D'Annolfos and gives the D'Annolfos a temporary license, at no cost to the D'Annolfos, for access across Town property for construction of the subdivision is revocable at will at any time by the Town. It is not in effect because according to its terms it is not in effect until all approvals of the Conservation Commission are obtained. The D'Annolfos have filed two lawsuits (which are pending) which have been, and are being defended, at considerable cost to the Town in legal fees and extensive time of Town staff. This hearing is but just one example of such a cost to the Town. A taxpayer may question why, in such circumstances, the Town would continue to agree to such a License Agreement.

EXHIBIT 1



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

November 16, 2018

Mr. Mark D'Annolfo and Mr. Phillip D'Annolfo
c/o Johnson and Borenstein, LLC
12 Chestnut Street
Andover, MA 01810-3706

RE: WETLANDS/ANDOVER
DEP File #090-1269
Frederick Drive
**REVOCATION OF SUPERSEDING
ORDER OF CONDITIONS**

Dear Sirs:

Under the provisions of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, and upon its own initiative, the Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (MassDEP), hereby **revokes** the Superseding Order of Conditions for the project referenced above in accordance with 310 CMR 10.05(6)(j).

On June 5, 2018, MassDEP issued a letter requesting additional information based on review of the information currently contained in the file and observations made at the site inspection conducted on March 3, 2016. MassDEP's letter stated that "all information submitted to MassDEP must at the same time be sent to all other parties to the appeal at the same time." MassDEP issued a Superseding Order of Conditions on November 5, 2018. On November 14, 2018 your representative acknowledged that the information and plans submitted to MassDEP on September 19, 2018 were not submitted to the Andover Conservation Commission (the "Commission") as instructed.

It is MassDEP's opinion that the Superseding Order of Conditions is invalid because it was not issued in accordance with the procedural requirements in the Wetlands Protection Act Regulations, 310 CMR 10.05(7)(i) which state that any party presenting information shall provide copies to all other parties.

Therefore, MassDEP is revoking this Superseding Order of Conditions in order to provide the Commission with an opportunity to review and comment on the documents and plans

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

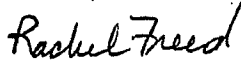
Printed on Recycled Paper

submitted in September of 2018. The Commission shall provide MassDEP and the Applicant with its comments on the additional information no later than December 7, 2018.

Please be aware that no activity may commence on any portion of the project site subject to the jurisdiction of M.G.L. Chapter 131, Section 40 until a valid Superseding Order of Conditions is issued.

If you have any questions regarding this matter, please contact me at 978-694-3258.

Sincerely,



Rachel Freed
Deputy Regional Director
Bureau of Water Resources – NERO

cc: Andover Conservation Commission, Town Offices, 36 Bartlett Street, Andover, MA 01810

EXHIBIT 2

To: Andrew Flanagan, Town Manager; Board of Selectman and Conservation Commission

From: Robert Douglas, Director of Conservation

Date: February 12, 2019

Re: Frederick Drive Appeal

I just wanted to send you a quick note about Don Borenstein's Appeal of the Andover Conservation Commission's selection of consultants related to a Notice of Intent filing on Frederick Drive. The appeal document is attached.

It is important to know that the proposed Frederick Drive subdivision will not be constructed at the edge or buffer of a wetland, but portions of it will actually fill and destroy an existing jurisdictional wetland. Additionally, the plan reflects the proponent's apparent desire to maximize the number of house lots and reduce the size of the stormwater treatment areas to a size that is less than needed to make them fit into the remaining area of the site. The filling of a wetland resource area in Andover of this scale is fairly rare. (In recent memory the widening of the State roadway at Dascomb Road and the construction of the Bancroft School are the only examples which come to mind). Furthermore, the site is problematic. Soils on the property do not drain well, some of which contain fill.

The project as proposed and submitted did not have the information the Commission needed to make a decision. Our peer reviewer was constantly in the position of having to react to new plans as the owner changed the design, and even the revised plans did not contain all of the needed information. The constant revisions of the plan have taken up a large amount of the Conservation Commission's time, and that of our peer review consultants. Each time we receive a new plan - every individual sheet and calculation must be scrutinized - as the changes are often not clearly expressed. Each time a new plan set is reviewed, the peer review consultants need to carefully document these changes in a new report and provide their findings to the Conservation Commission in an open session meeting. The Commission takes its job seriously and is interested in assuring that the environment is protected as well as the residents that live in the subdivision long after the site developers have left the scene.

While there are many quite unusual incidents related to this filing, I'll refer to the most relevant at the moment. In the fall the Conservation Commission issued a denial for the project and the Applicant appealed the denial to DEP. The Applicants - as part of the appeal - sent a significantly revised plan set, dated September 12, 2018 to DEP to have DEP issue a Superseding Order of Conditions. This revised plan set, was never sent to the Conservation Commission, Town Counsel or our peer review consultants for review prior to the appeal. Since DEP did not receive any comments from us about the new plans, DEP issued a Superseding Order of Conditions of project approval based on this plan set dated September 12, 2018. As soon as DEP was informed that we did not receive the new plans, DEP immediately revoked the Superseding Order.

The Applicant also appealed the denial under our local By-Law to Superior Court. Superior Court remanded the project back to the Conservation Commission for review, which includes a review of the significantly revised plan set (dated September 12, 2018) by the Conservation Commission's peer review consultants.

Contrary to regular procedures, this new plan has never been seen in a public setting by the Commission, nor had the 'sunshine' of a public meeting or hearing. It is critical that this review must

take place, and that the Commission can make informed decisions about it. Attorney Borenstein's appeal to the Board of Selectmen is an attempt to avoid a review of their controversial plan by refusing to pay the required fee for peer reviews.

Furthermore, these particular peer review consultants have been working on this project since December, 2014. If the proponents truly believe there is a conflict of interest and the consultants are not qualified to conduct the peer reviews, it is bewildering to me why an appeal was not filed by the Applicant's representative sooner

It must be noted that the Conservation Commission's peer review consultants are top professionals in their fields, hold professional certifications to that effect, and have served as expert witnesses in many capacities. The Commission and Staff need their input in order to make informed decisions about the project. Under the Massachusetts Wetlands Protection Act and our Town Wetlands Protection By-law, the Commission is allowed to retain peer review consultants to provide expert advice to town boards. Our consultants have no *Conflict of Interest* that I am aware of, and they are all qualified professionals.

Lastly, I feel portions of this new plan may be dangerous. Our peer review consultants are critical of the design and lack of adherence to engineering design standards in the plan. The plan includes a stormwater detention basin contained by a retaining wall that if built as planned, will hold back large quantities of water just 15 to 20-feet away from the neighbor's house. Through the findings of our engineering peer review consultant, and in conversations I have had with other engineers - including our Town Engineer – there have been some serious questions raised. Should this retaining wall fail there would be damage to the wetlands and major consequences to down gradient properties. We have specifically retained the firm Milone & MacBroom for their expertise in this matter. (This Engineering firm recently served as the advisor on the reconstruction of the large dam at Field Pond in Harold Parker State Park.) In a letter to the commission (1/22/2019) Milone & MacBroom stated that the submitted Frederick Drive plans were not adequate and concluded that, *"Essentially, we cannot proceed further with a detailed structural review until we receive more design information for the proposed retaining wall."*

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

14
SUPERIOR COURT
No. 1877CV0433

F. MARK D'ANNOLFO and PHILLIP W. D'ANNOLFO,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVES OF THE ESTATE OF IRENE L.
D'ANNOLFO,

Plaintiffs

v.

DONALD D. COOPER, THOMAS BRADY,
ALEXANDRA DRISCOLL, FLOYD S. GREENWOOD,
II, JON M. HONEA, KEVIN J. PORTER, and ELLEN
TOWNSON, as they are members of the ANDOVER
CONSERVATION COMMISSION

Defendants

ORDER OF REMAND

1. This matter is ordered remanded to the Andover Conservation Commission to hold duly noticed public hearings on the following documents:

1. The Subdivision Modification Plan, Frederick Drive (fka Frederick Street), Andover, Massachusetts, prepared by Andover Consultants (the "plans"), which include:
 - Sheet 1 of 9 Cover Sheet, revised September 12, 2018
 - Sheet 2 of 9 Site Grading and Utility Plan, revised September 12, 2018
 - Sheet 3 of 9 Site Utility and Profile Plan, revised September 12, 2018
 - Sheet 4 of 9 Roadway Grading Plan, revised September 12, 2018
 - Sheet 5 of 9 ESC Plan, revise September 12, 2018
 - Sheet 6 of 9 Construction Details Plan, revised September 12, 2018
 - Sheet 7 of 9 Wetland Replication Plan, revised September 12, 2018
 - Sheet 8 of 9 Drainage Details, revised September 12, 2018
 - Sheet 9 of 9 Existing Conditions Plan, dated March 7, 2017
2. The Stormwater Management Report, Frederick Drive, Andover, Massachusetts, Dated May 26, 2017, revised through September 12, 2018, prepared by Andover Consultants, Inc.

A TRUE COPY, ATTEST
[Signature]
DEPUTY ASSISTANT CLERK

3. A Storm Water Pollution Prevention Plan (SWPPP) dated September 12, 2018, prepared by Andover Consultants, Inc."

2. The Commission shall file a supplement to the Record Appendix within forty-five days of the issuance of the Commission's Supplemental Order of conditions rendered after the hearings on remand.

3. The Plaintiffs shall pay the costs of notice, publication and the Commission's peer review fees relating to the peer reviews of the foregoing documents.

4. The commission shall also conduct duly-noticed public hearings on any John T. Lu 1/16/2019
Justice of the Superior Court
DEP superceding Orders of Conditions approved by DEP
by the close of business on March 1, 2019.

EXHIBIT 4

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The town accountant shall submit annually a report of said special account to the Board of Selectmen and Town Manager to review. Such report shall be published in the town annual report. The town accountant shall submit annually a copy of said report to the director of the bureau of accounts.

EXHIBIT 5



Ann M. Marton
President & Director of Ecological Services

Serving as the President and Director of Ecological Services at LEC Environmental Consultants, Inc., Ann has been working in the environmental consulting field since 1987. She began her career as a Landscape Architect/Environmental Planner in Fairfield, Connecticut working on large-scale land use/land management and development projects located throughout New York and Connecticut with an emphasis on environmental permitting, protection of natural resources, and stormwater management. Moving to Massachusetts in 1994, she began working at LEC and purchased the business from the founder in 2008.

Ann is adept and experienced at guiding development teams through project design and regulatory compliance; assessing land use impacts to wetlands, wildlife, and endangered species; and effectively managing teams to meet project goals within timelines. She regularly represents a wide variety of private and public clients before federal, state, and local agencies through pre-application negotiations, environmental permit applications, and consultation regarding mitigation and regulatory compliance, wetland restoration and replication design, buffer zone mitigation, and construction supervision or monitoring.

Ann holds a B.S. degree in Landscape Architecture from Texas A&M University with graduate studies in Soil Science at the University of Massachusetts. She served on the Board of Directors for the Association of Massachusetts Wetland Scientists from 2001-2005, and is a member of the Women Presidents' Organization, Society of Wetland Scientists, and the Massachusetts Association of Conservation Commissions.

Ann has provided expert testimony for Middlesex and Norfolk Superior Courts, the DEP Adjudicatory Process, MA Appellate Tax Board, and the Massachusetts Department of Housing and Community Development Housing Appeals Committee. She also has lectured and instructed seminars on Wetlands, Rare Species, Riverfront Area, Planning and Permitting, and Erosion Controls in a variety of educational settings including for the Massachusetts Continuing Legal Education, Boston Bar Association, Rhode Island Real Estate Board, Association of Massachusetts Wetland Scientists, and Massachusetts Association of Conservation Commissions.

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508-753-3177 (Fax)
WORCESTER, MA

P. O. Box 580
Rindge, NH 03461
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603-899-6728 (Fax)
RINDGE, NH



Thomas A. Peragallo
Senior Soil/Wetland Scientist

Tom has over 42 years of experience in soil and wetland science and has been working at LEC since 2007. Tom began his career in 1976 with the USDA Soil Conservation Service managing soil survey parties in Massachusetts that were responsible for preparing soil survey reports for publication including creating high intensity soil maps; training new soil scientists; conducting public meetings and educational seminars; and providing assistance to individuals and units of government. Tom was the principal author of the Norfolk and Suffolk Counties, MA soil survey and was the co-author of the soil survey for Middlesex County, MA. In 1988 Tom left government service to form a private consulting company providing guidance and assistance to individuals and corporations in Massachusetts and New Hampshire on soil science and related environmental issues, including soil testing, site analyses, soil mapping, wetland mapping, and technical soil reports.

Tom's field of expertise has focused on soil testing, site analyses, soil classification, soil mapping and interpretation, wetland mapping, technical soil reports, land evaluation, conservation planning, and related environmental issues primarily in Massachusetts, Maine, and New Hampshire. Project participation has ranged from evaluating human disturbed soils that are difficult to interpret to routine wetland delineations and soil mapping. As a certified soil scientist, Tom meets the specialized qualifications required to delineate wetlands and map soils in Connecticut, Maine, and New Hampshire.

Tom holds a B.S. degree in Soil Science from the University of Rhode Island with post-graduate studies in Soil Science and Engineering wetland Science from the Texas A&M University Soil Science Institute. Mr. Peragallo is the co-chair of the New England Hydric Soil Technical Committee who is responsible for updating and publishing the *Field Indicators for Identifying Hydric Soil in New England*. Mr. Peragallo also serves as Vice President of the Society of Soil Scientists of Northern New England, and is on the teaching staff of University of New Hampshire Professional Development and Training. Mr. Peragallo also serves on the New Hampshire Board of Licensure for natural scientists. He has qualified as an expert witness in MA District and Superior Courts and Massachusetts DEP Adjudicatory Hearings. He routinely functions as a third party mediator for Conservation Commissions and Boards of Health.

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Daniel C. MacRitchie, P.E.

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dan@demacritchie.com
(603) 845-3572

PROFESSIONAL EXPERIENCE

1995 to 2002 and 2008 to Present – DC MacRitchie, Inc., Exeter, NH – Principal. D.C. MacRitchie, Inc. Responsible for company operations, preparation of site development plans, subdivisions, septic system designs, roadway design, drainage design and construction management.

2006 to 2008 – Engineering Division Manager, Hancock Associates, Salem, NH. Responsible for day-to-day operations, business development, and all engineering/construction activities occurring at Hancock's Salem, New Hampshire location. Sample projects include design and preparation of permit site plans for campus improvements at Tufts University, Endicott College, and management services for the Coakley Landfill Superfund Site in North Hampton, New Hampshire.

2001 to 2006 – General Manager/Partner, Great Mountain View Estates, LLC. Responsible for the managing all aspects of this business, including land acquisitions, securing funding, development of conceptual, preliminary, and final designs, preparation of all permit applications, coordination with soil scientists, wetland scientists, archeologists, traffic engineers, hydrogeologists, geotechnical engineers, and utility companies.

2002 to 2004 – USFilter, Lynn, MA – Operations Manager/Project Manager. Managed all aspects of design-build capital improvements projects ranging in value from \$20 million to \$48 million. Projects included combined sewer overflow (CSO) abatement and wastewater treatment plant upgrades.

1993 to 1995 – Colich and Sons (General Contractor, Environmental Construction), Gardena, CA – Project Manager. Responsible for coordinating subcontractors, operations, preparation of payment applications, field engineering, change order negotiations, and Primavera P3® scheduling for multiple projects, including a \$26 million Outfall Sewer Rehabilitation Project and an \$8 million Stormwater Pipeline/Retention Basin/Pump Station Construction.

1990 to 1993 – Montgomery Watson (Engineering), Pasadena, CA. – Project Engineer. Worked on the Los Angeles Collection System Task Force under the Los Angeles Collection Systems Engineering Division. Developed a \$190 million sewer system improvement master plan for the Greater Downtown Los Angeles area and participated in the development of master plans for several surrounding areas. The project included build-out analysis, constructability and cost assessments, and design of sewer collection system improvements.

1989 to 1990 – Hazen and Sawyer (Engineering), Hollywood, Fl. -- Engineer. Designed reuse water distribution network, pump stations, booster pump stations, and wastewater treatment system components. Performed construction phase services on waste water treatment plant projects.

EDUCATIONAL BACKGROUND

Master of Science Degree, **Environmental Engineering**, Loyola Marymount University, Los Angeles, 1992

Bachelor of Science Degree, Cum Laude, **Civil Engineering**, University of Massachusetts, Dartmouth, 1989

Bachelor of Science Degree, Cum Laude, **Construction Engineering**, University of Massachusetts, Dartmouth, 1988.

LICENSES and CERTIFICATIONS

Professional Engineer (Civil), New Hampshire
Professional Engineer (Civil), Massachusetts
New Hampshire Subsurface Sewage Disposal System Designer
New Hampshire Certified Septic System Evaluator
Massachusetts Soil Evaluator
40 hour hazardous waste trained
Certified Construction Documents Technologist



Glenn D. Jarvis, PE

Senior Project Specialist, Structural Engineering

Mr. Jarvis is a Senior Project Specialist of Structural Engineering with nearly 40 years of experience in roadway bridge design, bridge evaluation, roadway design, waterfront structures, and construction inspection. He is familiar with bridges on limited access highways, state routes, and local roads. His wide range of project experience includes commercial, industrial, municipal, and educational facilities for new structures in addition to rehabilitation of and modifications to existing ones. His responsibilities include structural analysis and design; project management; and the preparation of contract drawings, specifications, and cost estimates.

YEARS EXPERIENCE

- 11 With This Firm
- 28 With Other Firms

EDUCATION

BS, Structural Engineering
University of Connecticut

LICENSE & CERTIFICATIONS

Professional Engineer - CT, RI, MA

FHWA-Safety Inspection of In-Service
Bridges

2012 Domestic Scan on ABC
Connections Findings &
Recommendations

Contech Engineered Solutions ABC
Bridge Concepts

Post-Disaster Response (NYC DEP) | Ulster & Greene Counties, NY

Senior Structural Engineer responsible for providing emergency safety inspection of bridges and damage assessment of bridges, culverts, retaining walls, roads, rivers, and streams in the aftermath of Tropical Storm Irene. Provided recommendations for short- and long-term repairs and/or closure of bridges and roads in unsafe condition. Provided written inspection reports for all bridges and provided GPS coordinates and damage assessment reports for retaining walls and stream bank erosion.

Active Adult Housing, Evens Parcel | Canton, CT

Project Structural Engineer responsible for performing a construction inspection for the replacement of stone masonry retaining walls with Versa-Lok retaining walls.

Duggan Elementary School | Waterbury, CT

Project Structural Engineer responsible for the design of cast-in-place site retaining walls as part of a school renovation and addition.

Retaining Walls 524 & 546 East Center Street | Manchester, CT

Designed a precast block gravity wall for a private driveway and designed repairs to an existing timber retaining wall that was tilting.

River Road Bridge over Pomperaug River (LOTIP) | Southbury, CT

Project Manager providing design services relating to the superstructure replacement of the River Road Bridge over Pomperaug River. The existing bridge was constructed in 1962 and is a three span structure (48'-88'-48') with a superstructure that consists of steel beams with a cast-in-place concrete deck. The superstructure consists of a 3-span continuous steel beam and precast concrete decks. Scour mitigation measures were also provided at the South pier.

Vineyard Road Bridge over Burlington Brook (CTDOT Project No. 20-106-FLBP) | Burlington, CT

Project Manager for all phases of design including the preparation of a structure type study, design reports, complete construction documents, and construction cost estimate for the reconstruction of the Vineyard Road Bridge (No. 05916) in Burlington, Connecticut. Prepared local permit applications and property maps for rights-of-way.



Michael R. Gagnon, PE

Senior Project Specialist, Civil Engineering

Mr. Gagnon brings over 30 years of diverse project experience with the preparation of feasibility studies, engineering reports, construction drawings, regulatory permits, technical specifications, and cost estimates. Mr. Gagnon has been responsible for engineering services associated with many transportation, land development, and water resource projects throughout southern New England from inception through construction. He has expertise in stormwater management design and hydraulic modeling. He has vast knowledge of local, state, and federal land use and environmental regulations, with several years of project development experience and coordination with local and state agencies including MassDOT, MassDEP, CTDEEP, local planning boards, and conservation commissions. Mr. Gagnon has managed many small- to medium-sized projects that include technical and fiscal responsibilities, client communications, supervision of support staff, and coordination with outside consultants.

YEARS EXPERIENCE

- 8 With This Firm**
- 27 With Other Firms**

EDUCATION

BS, Civil Engineering
Roger Williams University

LICENSE & CERTIFICATIONS

Professional Engineer - MA, CT, NH
National Council of Examiners for Engineering and Surveying (NCEES) Certification

AFFILIATIONS

American Society of Civil Engineers (ASCE)
Boston Society of Civil Engineers Section (BSCES)

Agawam Sportsplex | Agawam, MA

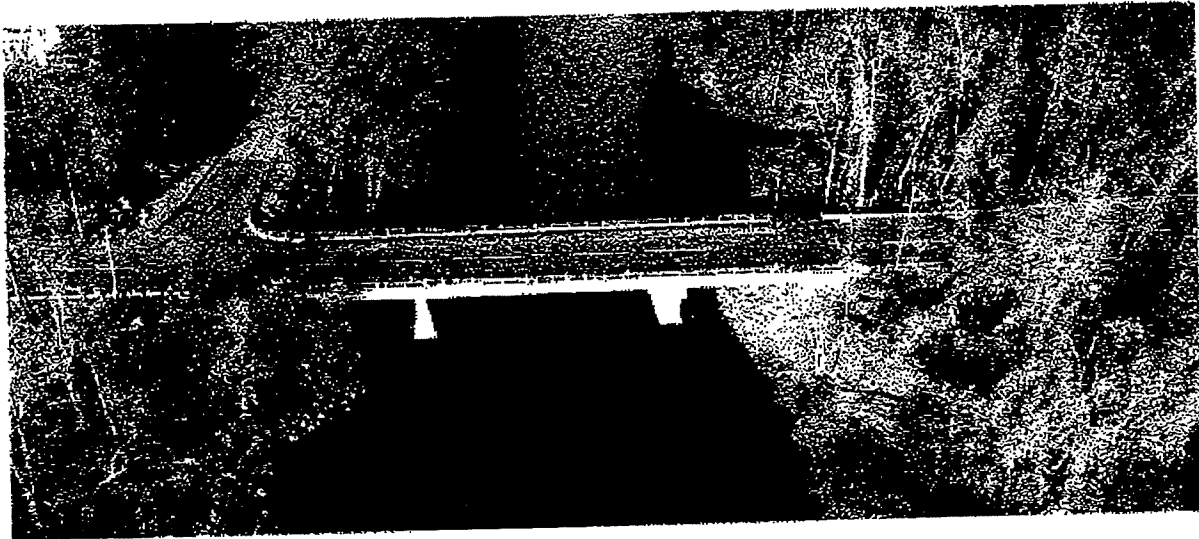
Senior Engineer responsible for stormwater management design and permits associated with a new private athletic facility in the Town of Agawam, Massachusetts. Also provided representation at Town of Agawam planning board and conservation commission hearings.

Chicopee Riverwalk | Chicopee, MA

Senior Engineer responsible for the preparation of design drawings, environmental permits, and supporting documentation for design review submissions to MassDOT for a 1-mile segment of multiuse trail along the Chicopee River. The proposed trail was designed to generally follow a former rail line with design improvements as required to create a useable trail width while providing stability to the adjacent slopes. The project also included a challenging trail connection to the City Parks Department Facility along a steep embankment that required retaining walls with a switchback alignment in order to achieve ADA access to the project corridor.

Chicopee Distribution Center Building Expansion | Chicopee, MA

Senior Engineer responsible for the preparation of site plans and engineering documentation for site plan review for a new 38,000 square foot building expansion at a Distribution Center in Chicopee, Massachusetts. Services included the preparation of a detailed stormwater management plan that included a subsurface retention system to detain site runoff recognizing the receiving municipal stormwater collection system is at maximum capacity. Stormwater quality enhancements consisting of bioretention swales and stormwater quality treatment units were included for the site that had little or no stormwater quality measures. Also responsible for the coordination of other services by Milone & MacBroom including geotechnical engineering and construction administration which includes submittal review, RFI response, material testing, and periodic construction observation.



STRUCTURAL ENGINEERING

Services

PLANNING

- Structural Evaluations
- Preliminary Structural Design
- Material & Cost Estimating
- Feasibility Studies
- Value Engineering
- Utility Coordination

DESIGN

- Structural Design & Analysis
- Commercial, Light Industrial & Residential Buildings
- Concrete, Steel & Timber Design
- Foundations & Retaining Walls
- Pedestrian Bridges
- Dams, Tide Gates, Fish Ladders & Sluice Gates

CONSTRUCTION

- Temporary Structures
- Shop Drawing Review
- Materials Testing

INVESTIGATION

- Evaluation, Rehabilitation & Repair of Existing Structures
- Strengthening of Existing Structures

Milone & MacBroom has evolved into one of the leading engineering, landscape architecture, and environmental science organizations with an excellent reputation in structural design. Our qualified professional engineers offer technically sound, creative solutions that are cost-effective, while still maintaining flexibility and quality.

Milone & MacBroom provides a full range of structural consultation for our clients, including architects, developers, contractors, private clients, local authorities, and government entities. Our major asset is the ability to work closely and pro-actively with our clients, contributing our talents and experience wherever possible, but without preconceived ideas which may otherwise conflict with the aspirations of the project.



CIVIL ENGINEERING

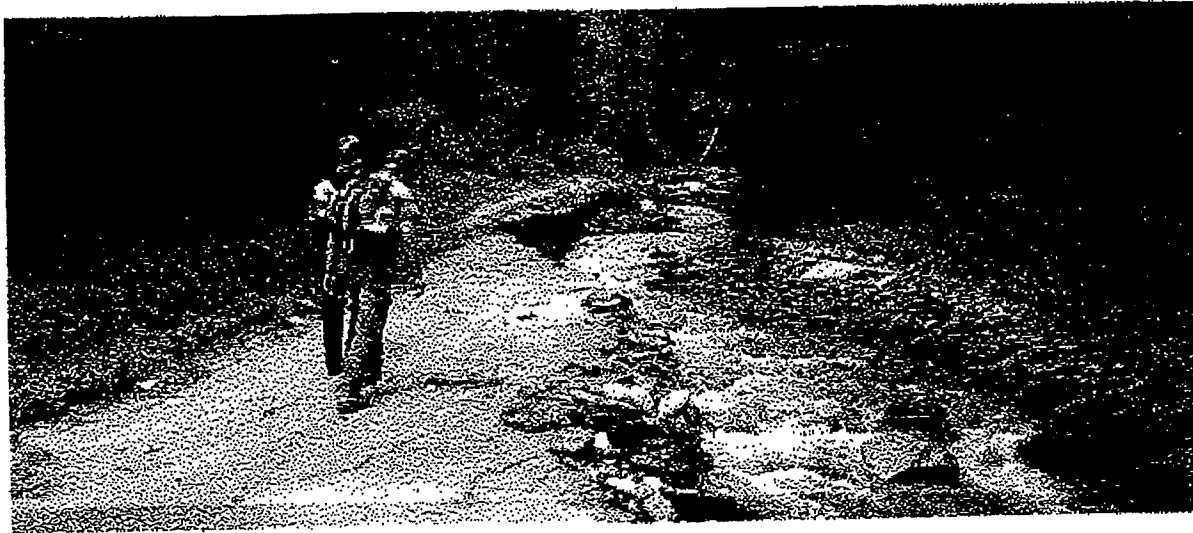
SERVICES

- Site Analysis & Selection
- Master Planning
- Site Design & Engineering
- Infrastructure & Utilities
- Water Supply Systems
- Sanitary Sewer Systems
- Land Use Permitting
- Construction Documents & Specifications
- Cost Estimating
- LEED
- Erosion Control
- Hydraulic Analysis
- Stormwater Management
- Project Management
- Low Impact Development Techniques

Civil engineering was one of the first disciplines in which Milone & MacBroom was founded on. The Civil Engineering Department has been committed to providing comprehensive site development services from concept to construction.

Site planning and infrastructure design represent the merging of the Civil Engineering and Landscape Architecture disciplines. By understanding a site's natural resources and their inherent characteristics and functions, our design professionals seek to blend creatively our client's development program within the framework of the site's opportunities and constraints.

Whether it is residential, commercial, industrial, municipal, or institutional project, Milone & MacBroom provides a full range of professional services assisting our clients from concept development to project completion.



WATER RESOURCES

Services Provided

- Watershed Planning
- River Management & Restoration Planning
- Geomorphologic Based Design
- Dam Inspection & Removal Design
- Sediment Transport Analysis
- Scour Analysis
- Steady & Unsteady HEC-RAS Modeling
- Fish Passage Design
- Hazard Mitigation Planning
- Tidal & Inland Restoration
- Lake & Pond Restoration
- Habitat Assessment
- Environmental Impact Evaluations
- Wetland Delineation
- Permitting
- Site Assessment & Remediation
- Forestry Management

Milone & MacBroom is recognized throughout the country for its leadership and innovation in the fields of water resource engineering and environmental science. As consultants to federal, state, and local government, our environmental engineers and scientists marry the principles of engineering, biology, hydrogeology, and earth sciences to develop environmentally sensitive project designs.

We have long considered it important to not only understand but also respect the local, state, and federal environmental regulations that govern this work. We understand that a design is only good if it can be permitted and built. Therefore, embedded within this group is extensive expertise in environmental permitting. Staff assist project teams throughout the firm in developing designs that improve the management of water resources and preserve our natural environment.